

AL-JUWAYNĪ'S DOCTRINE OF THE IMĀMATE

BY

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## ABSTRACT

This thesis is devoted to the study of the doctrine of the imāmate according to Imām al-Ḥaramayn Abū al-Maʿālī ʿAbd al-Malik bin ʿAbdullah al-Juwaynī.

The thesis consists of eight chapters. It begins with a brief introduction to the life of al-Juwaynī and the historical background to his doctrine of the imāmate. The first chapter deals with al-Juwaynī's concept of the imāmate and its establishment. The second chapter deals with the qualifications required for the imām. The third chapter deals with the disqualification and dismissal of the imām. This comprises three separate sections i.e. the circumstances which require disqualification, the circumstances which require dismissal and the rules pertaining the dismissal. Chapter four deals with the duties of the imām. Chapter five deals with the assistants and equipment required by the imām. Chapter six and seven deal with the legitimacy of the imāmate of the four Guided Caliphs and the legitimacy of the de facto imāmate of Nizām al-Mulk, respectively.

In analyzing al-Juwaynī's doctrine of the imāmate, an attempt is made in chapter eight to show the chain of thought among the traditional scholars prior to and after him, and to show the contribution made by al-Juwaynī in



the formulation of the doctrine of the imāmate in Islam.

The conclusion, presents the result of the analysis of his writing on the doctrine of the imāmate, its origin and influence.

## LIST OF ABBREVIATIONS

al-ʿAqīdah	: al-Juwaynī, <u>al-ʿAqīdah al-Nizāmiyyah</u>
al-Nizāmiyyah	
al-Bidāyah	: Ibn Kathīr, <u>al-Bidāyah wa al-Nihāyah</u>
al-Burhān	: al-Juwaynī, <u>al-Burhān fī Uṣūl al-Fiqh</u>
Cambridge	: <u>The Cambridge History of Iran</u> , ed.
History of Iran	R.N. Frye
EI(1)	: <u>The Encyclopaedia of Islam</u> ,
EI(2)	: <u>The Encyclopaedia of Islam</u> , New Edition
EI(C)	: <u>The Concise Encyclopaedia of Islam</u>
EI(S)	: <u>The Shorter Encyclopaedia of Islam</u>
Faḍā'ih	: al-Ghazālī, <u>Faḍā'ih al-Bāṭiniyyāh</u>
Fiqh	: ʿAbd al-ʿAzīm al-Dīb, <u>Fiqh Imām al-Ḥaramayn</u>
al-Ghiyāthī(1)	: al-Juwaynī, <u>Ghiyāth al-Umam fī Iltiyāth al-Zulam</u> , ed. ʿAbd al-ʿAzīm al-Dīb
al-Ghiyāthī(2)	: al-Juwaynī, <u>Ghiyāth al-Umam fī Iltiyāth al-Zulam</u> , ed. Fu'ād ʿAbd al-Munʿim and Muṣṭafā Ḥilmī
al-Ibānah	: al-Ashʿarī, <u>al-Ibānah ʿan Uṣūl al-Diyānah</u>
Imām al-Ḥaramayn	: Muḥammad b. ʿAlī b. ʿUthman al-Ḥarbī, <u>Imām al-Ḥaramayn Abū al-Maʿālī al-Juwaynī wa Atharuh fī ʿIlm al-Kalām</u>

- al-Iqtiṣād : al-Ghazālī, al-Iqtiṣād fī al-Iʿtiqād
- al-Irshād : al-Juwaynī, al-Irshād ilā Qawāṭiʿ al-Adillah fī Uṣūl al-Iʿtiqād
- Islamic Dynasties: C.E. Bosworth, The Islamic Dynasties
- al-Kāfiyāh : Fawkiā Hussein Mahmūd, al-Kāfiyah fī al-Jadal
- al-Kāmil : Ibn al-Athīr, al-Kāmil fī al-Tārikh
- Lamʿ al-Adillah : al-Juwaynī, Lamʿ al-Adillah fī Qawāʿid Ahl al-Sunnah wa al-Jamāʿah
- al-Lumāʿ : al-Ashʿarī, Kitāb al-Lumāʿ fī al-Radd ʿalā Ahl al-Zaygh wa al-Bidʿ
- al-Nujūm : Ibn Taghribirdī, al-Nujūm al-Zāhirah fī Mulūk al-Miṣr wa al-Qāhirah
- al-Mankhūl : al-Ghazālī, al-Mankhūl min Taʿlīq al-Uṣūl
- Muʿjam : Yāqūt, Muʿjam al-Buldān
- Mughīth al-Khalaq: al-Juwaynī, Mughīth al-Khalaq fī Bayān al-Aḥaqq
- The Origination : Fawkiā Hussein Mahmūd, Al-Juwaynī and the Origination of the World
- al-Qur'ān : al-Qur'ān, translated by Abdullah Yusuf Ali
- al-Shāmil : al-Juwaynī, al-Shāmil fī Uṣūl al-Dīn
- Subkī's Ṭabaqāt : al-Subkī, Ṭabaqāt al-Shāfiʿiyyah al-Kubrā
- Tabyīn : Ibn ʿAsākir, Tabyīn Kadhb al-Muftarī fī Mā Nusiba ilā Abī al-Ḥasan al-Ashʿarī

- al-Tamhīd : al-Bāqillānī, al-Tamhīd fī al-Radd  
‘alā al-Mulḥidah al-Mu‘atṭilah wa  
al-Qarāmiṭah wa al-Khawārij wa  
al-Mu‘tazilah
- Uṣūl al-Dīn : al-Baghdādī, Uṣūl al-Dīn
- Wafayāt : Ibn Khallikān, Wafayāt al-A‘yān
- al-Waraqāt : al-Juwaynī, al-Waraqāt fī Uṣūl al-Fiqh

## NOTE ON TRANSLITERATION

The transliteration system used in this thesis is that used by the Encyclopaedia of Islam with some exceptions for the sake of convenience. The following are the exceptions:

- (i) th is used for ث instead of th;
- (ii) J is used for ج instead of dj;
- (iii) kh is used for خ instead of kh;
- (iv) dh is used for ذ instead of dh;
- (v) sh is used for ش instead of sh;
- (vi) gh is used for غ instead of gh;
- (vii) q is used for ق instead of k;
- (viii) h is added to transliterate tā marbūṭah ( ة ).

For example, مدينة is translated as "Madīnah";

- (iv) In the case of muḍāf, t is used instead of h for tā' marbūṭah. For example, تولية العهد is translated as "tawliyat al-ʿahd"; and

- (v) Whenever the word الله is muḍāf ilayh, the Muḍāf and muḍāf ilayh are connected together.

For example, عبدالله is transliterated as "ʿAbdullāh".

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## INTRODUCTION

Much has been written on the life of al-Juwaynī, on his works and on the historical background to his thought.<sup>1</sup> However, for the purpose of shedding light on al-Juwaynī's doctrine of the imāmate, an account of al-Juwaynī's life, and some facts of the historical background which are related to the doctrine will be given in brief.

### 1. The Life of al-Juwaynī

The full name of al-Juwaynī is Abū al-Ma'ālī 'Abd al-Malik ibn al-Shaykh Abī Muḥammad 'Abdullah b. Yusuf b. Abī Ya'qūb Yūsuf b. 'Abdullah b. Yusuf b. Muḥammad b. Ḥayyūyah al-Juwaynī.<sup>2</sup> Al-Juwaynī is known by many titles (kunya). One of the titles is "Abū al-Ma'ālī". The possible reason for being known by this title is that he dealt all his life

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<sup>1</sup> See (i) Fawkiā Hussein Maḥmūd, The Origination, pp. 6 - 120, (ii) Idem, in his introduction to the edition of Lam' al-Adillah, pp. 1 - 58, (iii) Idem, in his introduction to the edition of al-Kāfiyah, pp. 9 - 25, (iv) Muḥammad b. 'Alī 'Uthmān Ḥarbī, Imām al-Haramayn, pp. 19 - 76, (v) 'Abd al-'Azīm al-Dīb, in his introduction to the edition of al-Ghiyāthī(1), pp. 15 mim - 115 mim, (vi) Idem, in his introduction to the edition of al-Burhān, pp. 23 - 35, (vii) Idem, Fiqh, pp. 3 - 67, (viii) Fu'ād 'Abd al-Mun'im and Muṣṭafā Ḥilmī, in their introduction to the edition of al-Ghiyāthī(2), pp. 11 mim - 32 mim, (ix) Muḥammad Yusuf Mūsā and 'Alī 'Abd al-Ḥamid, in their introduction to the edition of al-Irshād, pp. hā - thā, (x) Helmut Kloper, in his introduction to the edition of al-Shāmil, pp. 3 - 8.

<sup>2</sup> Wafayāt, vol. 3, p. 167, However, al-Subkī differs from Ibn Khallikān in Wafayāt as he calls al-Juwaynī in his Tabaqāt 'Abd al-Malik b. 'Abdullah b. Yusuf b. Muḥammad b. 'Abdullah b. Ḥayyūyah al-Juwaynī (Tabaqāt, vol. 5, p. 165)

with theology, placing it on a higher and more honourable footing among the Muslims and the way in which, by his clear and persuasive logic, he raised and dignified Islam.<sup>3</sup> He was also known by "Ḍiyā' al-Dīn". The reason for being known by this title is that he stood as a beacon to the defenders of the faith.<sup>4</sup> Another title by which al-Juwaynī was known is "Imām al-Ḥaramayn". The reason is that he lived in Makkah and Madīnah for four years, during which time he was serving the Islamic faith by debating, giving decisions in Islamic law and trying to spread knowledge everywhere.<sup>5</sup> Beside the above titles, "al-Juwaynī", the name which is used in this thesis is his relative name (nisbah) by which he was also known and is the one used by most of the biographers.<sup>6</sup> Although it was a common tradition among the traditional Muslim scholars to be related to the place of their birth and death, the title of "al-Juwaynī" by which al-Juwaynī was known is not due to the same reason because Juwayn' is not the place of the birth or the death of al-Juwaynī, as will be mentioned

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<sup>3</sup> The Origination, p. 7

<sup>4</sup> Ibid., p. 8

<sup>5</sup> Ibid., pp. 8 - 9

<sup>6</sup> Ibid., p. 7. Only al-Subkī calls al-Juwaynī al-Naysābūrī". (See Subkī's Tabaqāt, vol. 5, p. 165)

<sup>7</sup> Juwayn is the arabized name of Kuyān as it was called by the people of Khurāsān. It is located between Bisṭām and Naysābūr, bounded by Bayhaq in the west (jihat al-qiblah) and by Jājiram in the north. (See Mu'jam al-Buldān, vol. 2, p. 223)



later. This title was the title of his father as his father was born in Juwayn. Al-Juwaynī inherited this title from his father after the death of his father when he replaced his father's position in his twenties as a teacher in the school where his father was teaching.<sup>8</sup>

The most probable place where al-Juwaynī was born is Bushtaniqān<sup>9</sup> in Khurāsān<sup>10</sup> and the most probable date of his birth is 419 A.H./1028 C.E.<sup>11</sup> He was descended from an Arab tribe of Sinbis.<sup>12</sup> His mother was a righteous and gracious slave (jāriyah) who was bought by his father.<sup>13</sup> His father was a leading scholar (imām) of his time in Naysābūr, a jurist (faqīh) and pious.<sup>14</sup>

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<sup>8</sup> The Origination, p. 8

<sup>9</sup> See The Origination, p. 11. Some scholars such as Ann Lambton in her State and Government in Medieval Islam, Oxford, 1980, p. 104 citing El-Irshād par Imam el-Haramein V siecle (hegire), ed. and trans. by J.D. Luciani, Paris, 1938, Arabic text, 231ff, and Fu'ād 'Abd al-Mun'im and Muṣṭafā Ḥilmī in the introduction of their al-Ghiyāthi(2), p. 11 mīm., Subkī's Tabaqāt, vol. 5, p. 169 suggest that al-Juwaynī was born in Juwayn. Bustinqān is one of the pleasant little villages near Naysābūr. It is separated from Naysābūr by about 3 or 3 and half (English) miles. (See The Origination, p. 11).

<sup>10</sup> It is a broad area (bilād wāsi'ah), located in the Central Asia. (Cf. Mu'jam, vol. 2, p. 401).

<sup>11</sup> See The Origination, p. 12, al-Bidāyah, vol. 12, p. 138, Wafayāt, vol. 3, p. 169. Some biographers say that al-Juwaynī was born in 417 A.H./1026 C.E., however, this date is contradictory to the agreement among themselves on the date of his death in 478 A.H./1085 C.E. and on his age when he died was 59 years old. (See Ibid.)

<sup>12</sup> Cf. Fiqh, pp. 44- 47

<sup>13</sup> Wafayāt, vol 3, pp. 169, al-Bidāyah, vol. 12, p. 138

<sup>14</sup> Mu'jam, vol. 2, pp. 223 - 224.

As his father was a learned man and a leading scholar of his time, the first education al-Juwaynī received was from his own father. Under his father al-Juwaynī studied Islamic law.<sup>15</sup> Other than Islamic law (fiqh), he also studied the views of different schools of law (al-madhāhib), theology (uṣūl) and the Prophet's tradition (ḥadīth)<sup>16</sup> from different teachers.<sup>17</sup> It is said that al-Juwaynī also had learned knowledge which is condemned by the Muslims (ahl al-Islām).<sup>18</sup> Some scholars<sup>19</sup> suggest that the knowledge which is referred to here by al-Juwaynī is philosophy. However, no philosophy books have been found written by al-Juwaynī. Some others<sup>20</sup> say that the knowledge which he referred to here is ʿilm al-kalām (theology) as he has written some theological books and later, at the end of his life he rejected the validity of ʿilm al-kalām. In rejecting the validity of ʿilm al-kalām, al-Juwaynī says:

"Do not learn ʿilm al-kalām. If I knew that ʿilm al-kalām could have brought me up to this stage, I would

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<sup>15</sup> Subkī's Tabaqāt, vol. 5, p. 169

<sup>16</sup> Ibid., vol. 5, p. 171, p. 175, p.179, p. 182

<sup>17</sup> See list of al-Juwaynī's teachers in Appendix II.

<sup>18</sup> Subkī's Tabaqāt, vol. 5, p. 185.

<sup>19</sup> For example ʿAbd al-ʿAzīm al-Dīb. (See al-Ghiyāthī(1), pp. 38 mīm - 39 mim. Idem, Fiqh, p. 64)

<sup>20</sup> For example, Fu'ād ʿAbd al-Munʿim and Muṣṭafā Ḥilmī. (See al-Ghiyāthī(2), p. 12 mīm, Fawkiā Hussein Mahmood (See Lamʿ al-Adillah, p. 56)

not have learned it"<sup>21</sup>

Al-Juwaynī also has a very good command of Arabic language.<sup>22</sup>

As to his teachers, Muḥammad b. ʿAlī ʿUthmān Harbī in his book Imām al-Ḥaramayn Abū al-Maʿālī al-Juwaynī wa Atharuh fī ʿIlm al-Kalām, divides al-Juwaynī's teachers into two categories - the ones under whom al-Juwaynī studied directly and the ones from whom al-Juwaynī studied indirectly i.e. by reading the books written by the previous scholars.<sup>23</sup> Among the teachers from whom al-Juwaynī benefitted most is Abū al-Qāsim al-Iskāfī<sup>24</sup> of the school of al-Bayhaqī.<sup>25</sup> From Abū al-Qāsim, al-Juwaynī studied theology (uṣūl) and Islamic Jurisprudence (uṣūl al-fiqh). The importance of this teacher is shown in al-Juwaynī's words:

"I used to take notes several chapters on theology

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<sup>21</sup> Subkī's Tabaqāt, vol. 5, p. 186

<sup>22</sup> Ibid., vol. 5, p. 179

<sup>23</sup> See Appendix II

<sup>24</sup> He is Abū al-Qāsim ʿAbd al-Jabbār b. ʿAlī b. Muḥammad b. Ḥaskān al-Isfarāyīnī al-Iskāfī, among the leading jurists at his time, an ʿAshʿarite theologian, d. 452 A.H./1060 C.E. (See Subkī's Tabaqāt, vol. 3, pp. 220 - 252)

<sup>25</sup> The owner of the school is Aḥmad b. al-Ḥusayn b. ʿAlī b. ʿAbdullah al-Bayhaqī al-Khasrūkhaddī, a shāfiʿite jurist, d. 485 A.H/1066 C.E. (See Imām al-Ḥaramayn, p. 31)



(uṣūl) from him [Abū al-Qāsim] and I read myself a hundred of volumes [of his books]".<sup>26</sup>

However, from his al-Ghiyāthī, it seems that his indirect teachers are more influential on him than his direct teachers. Most of the references in his writing in al-Ghiyāthī are made to his indirect teachers such as al-Ash'arī and al-Bāqillānī.<sup>27</sup> In the case of al-Bāqillānī, for example, although al-Bāqillānī died before al-Juwaynī was born, and al-Juwaynī did not study directly from him, many of the thoughts which al-Juwaynī composed in his academic works were taken from al-Bāqillānī through his books. In the field of ʿilm al-kalām, al-Juwaynī says:

"I would not speak on ʿilm al-kalām even a word until I have memorized 12,000 pages (waraqāt) of the kalām of al-Qāḍī Abū Bakr"<sup>28</sup>

Kitāb al-Talkhīs fī Uṣūl al-Dīn of al-Juwaynī is said to be the summary of al-Bāqillānī's books.<sup>29</sup> This shows the closeness of the intellectual relationship between al-Juwaynī and al-Bāqillānī.

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<sup>26</sup> Tabyīn, pp. 278 - 280

<sup>27</sup> He is al-Qāḍī Abū Bakr Muḥammad b. al-Ṭayyib b. Muḥammad b. Jaʿfar b. al-Qāsim al-Bāqillānī, d. 404 A.H/1013 C.E., Note: al-Juwaynī was born in 419 A.H/1028 C.E.

<sup>28</sup> Subkī's Tabaqāt, vol. 5, p. 186

<sup>29</sup> The Origination, p. 55 citing al-Khawansī, Rawḍāt al-Jannāt, Ebrain Edition, pp. 463.

Due to a religious intrigue in Naysābūr against the Ash'arites i.e. fitnat al-Kundurī, which will be mentioned later, in about 443 A.H./1051 C.E - 447 A.H./1055 C.E., al-Juwaynī, as a defender of the Ash'arism, was forced to leave Naysābūr for Baghdād and from there he continued his travels to al-Hijāz and stayed in Makkah and Madīnah for about four years debating, giving decisions in Islamic law and trying to spread knowledge everywhere.<sup>30</sup> Due to his staying in Makkah and Madīnah, he was called "Imām al-Ḥaramayn" as mentioned earlier.<sup>31</sup> During his travels to these places, he also took opportunities to benefit from the scholars there to gain more knowledge. This is especially so in Baghḍād as at that time Baghḍād was the biggest centre for scholars (ʿulamā') and knowledge.<sup>32</sup> Other than these places, al-Juwaynī also traveled to Isfahan to gain knowledge from the scholars there.<sup>33</sup>

From Makkah, al-Juwaynī returned to Naysābūr when Alp Arslān<sup>34</sup> came to power in 455 A.H./1063 C.E and Niẓām al-

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<sup>30</sup> Subkī's Tabaqāt, vol. 5, pp. 176, Wafayāt, vol. 2, p. 341, al-Bidāyah, vol. 12, p. 34

<sup>31</sup> See p. 2 of this chapter.

<sup>32</sup> Tabyīn, p. 280

<sup>33</sup> Ibid., p. 281

<sup>34</sup> He is the second ruler of the Saljūq dynasty after Ṭughril Beg, obeyed and brave, died in 465 A.H./1073 C.E. (See al-Nujūm, vol. 5, p. 92, Subkī's Tabaqāt, vol. 5, p. 170).

Mulk<sup>35</sup> was appointed by him as his wazīr (minister) in the same year.<sup>36</sup> When the Saljūq state was under the rule of Alp Arslān and under the wizārah (ministership) of Nizām al-Mulk, the Ash'arites who emigrated abroad due to the earlier mentioned religious intrigue were recalled to Naysābūr. Perhaps, this is one the reasons for al-Juwaynī's great regard for Nizām al-Mulk, a subject will be discussed more fully later.

After his return to Naysābūr, al-Juwaynī was appointed as a teacher at al-Nizāmiyyah madrasah (school) which was built by Nizām al-Mulk for him in Naysābūr.<sup>37</sup> He continued teaching at this school for thirty years until the end of his life. During this time, he also became the head of the Sunnite community<sup>38</sup> and the preacher at al-Manī'ī mosque, the biggest mosque in Naysābūr.<sup>39</sup>

As to his character, al-Juwaynī was known for his humbleness,<sup>40</sup> freedom in thinking,<sup>41</sup> possession of strong

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<sup>35</sup> See details about Nizām al-Mulk will be mentioned later in this introduction, See also full discussion on the de facto imamate of Nizām al-Mulk in chapter VII of this thesis

<sup>36</sup> Subkī's Tabaqāt, vol. 5, p. 170, p. 176, Wafayāt, vol. 3, p. 168

<sup>37</sup> Subkī's Tabaqāt, vol. 5, pp. 171, p. 176

<sup>38</sup> Ibid., vol. 5, p. 177.

<sup>39</sup> Ibid., vol. 5, p 181.

<sup>40</sup> See Wafayāt, vol. 3, p. 168, Subkī's Tabaqāt, p. 180.



memory,<sup>42</sup> patience in seeking knowledge,<sup>43</sup> gentleness of heart,<sup>44</sup> generosity,<sup>45</sup> self-confidence,<sup>46</sup> intelligence, perspicacity, appreciation of reason and knowledge, and respect for his adversaries in his argument with them.<sup>47</sup>

Al-Juwaynī is a mujtahid and hates taghlīd (imitation). In many places in al-Ghiyāthī, al-Juwaynī mentions that the rules which he formulates in it are of his own ijtihad and have not been written by any of his predecessors. For example, when concluding his discussion on revenues (al-amwāl) of bayt al-māl (national treasury), he says:

"So, the discussion (al-kalām) on the possibility of the revenues (al-amwāl) of bayt al-māl (national treasury) being exhausted is a new issue (wāqī'ah) which has not yet been preceded by any previous scholars (al-mādiyyīn)....."<sup>48</sup>

On his attitude towards ijtihad, al-Juwaynī says:

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<sup>41</sup> Tabyīn, p. 279, Subkī's Tabaqāt, p. 175, p. 180.

<sup>42</sup> Wafayāt, vol. 3, p. 168.

<sup>43</sup> Subkī's Tabaqāt, p. 170, p. 179.

<sup>44</sup> Wafayāt, vol. 3, p. 168

<sup>45</sup> Subkī's Tabaqāt, vol. 5, p. 170.

<sup>46</sup> See al-Ghiyāthī(1), p. 34 mīm - 35 mīm, Fiqh, p. 60.

<sup>47</sup> Tabyīn, p. 279, Subkī's Tabaqāt, pp. 134 - 135

<sup>48</sup> al-Ghiyāthī(1), p. 267.

"I do not fear to establish a rule which has not yet been established by any of the jurists or has not been exposed by any of the scholars as most of the contents of this book are not found (yulfā) in any [other] book or in any chapter [of another book]. If any rules have been composed by any scholars (aqwām), [which I have approved of], I will refer the topics to their books."<sup>49</sup>

His criticism of al-Māwardī<sup>50</sup>, his older contemporary, in his al-Ghiyāthī shows his hatred of taqlīd.<sup>51</sup>

As a mujtahid and a learned man, al-Juwaynī wrote many books in various fields of Islam - laws (fiqh), jurisprudence (usūl al-fiqh), theology (ʿilm al-kalām), difference between madhhabs (khilāf) and science of dispute (jadāl).<sup>52</sup>

As to al-Juwaynī's position as a scholar, probably some comments from other scholars may be appropriate here.

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<sup>49</sup> Ibid., p. 266.

<sup>50</sup> He is ʿAlī b. Muḥammad b. Ḥabīb, known by Abū al-Ḥasan al-Māwardī, (Subkī's Tabagāt, vol. 5, p. 267), died in 450 A.H./1058 C.E. (Ahmad Mubārak al-Baghdādī, "The Political Thought of Abū Ḥasan al-Māwardī" (unpublished Phd thesis, University of Edinburgh, 1981, p. 37).

<sup>51</sup> See his criticism on al-Māwardī in al-Ghiyāthī(1), pp. 140 - 142 and pp. 205 - 206.

<sup>52</sup> Many of al-Juwaynī's books are still in the form of manuscripts and have not yet been edited. A list of books which are written by al-Juwaynī is given in the Appendix (i) at the end of this thesis and for the benefit of those who are interested in the research on other al-Juwaynī's works, some useful information about the books are also provided. More details about al-Juwaynī's books can be found in The Origination, pp. 53 - 112 and in Imām al-Ḥaramayn, pp. 67 - 76.



Regarding this, Abū Ishāq al-Shīrāzī<sup>53</sup> says:

"Benefit (tamatta'ū) from this scholar because he is an honour (nuzhah) of this era",<sup>54</sup>

"Oh the one who benefits the people of the east and the people of the west, those who came earlier (al-awwalūn) and those who came later (al-ākhirūn) have benefitted from your knowledge"<sup>55</sup>

and on another occasion, Abū Ishāq al-Shīrāzī describes him as the leader of the scholars (imām al-a'immaḥ).<sup>56</sup>

Commenting on al-Juwaynī, Shaykh al-Islām Abū 'Uthman Isma'īl b. Abd al-Raḥmān al-Ṣābūnī<sup>57</sup> says:

"God has turned away the loathsome things (al-makāriḥ) from this scholar and today he is the pleasure (gurrat 'ain) of Islam and its defender with the eloquence of speech".<sup>58</sup>

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<sup>53</sup> One of the scholars (a'immaḥ) who is contemporary with al-Juwaynī, the head of al-Niẓāmiyyah school in Baghdad.

<sup>54</sup> Subkī's Tabaqāt, vol. 5, p. 172, Wafayāt, vol. 1, p. 361.

<sup>55</sup> Subkī's Tabaqāt, vol. 5, p. 172.

<sup>56</sup> Ibid.

<sup>57</sup> He is Isma'īl b. 'Abd. al-Raḥmān b. Aḥmad b. Isma'īl b. Ibrāhīm b. 'Āmir b. 'Ā'id Shaykh al-Islām Abū 'Uthmān al-Ṣābūnī, a jurist, expert of ḥadīth (muhaddith), died in 449 A.H./1056 C.E. (The Origination, p. 114)

<sup>58</sup> Subkī's Tabaqāt, vol. 5, p. 173

Abū Muḥammad al-Jurjānī<sup>59</sup> describes al-Juwaynī as follows:

"He is the scholar of his time, unique of his kind, incomparable in terms of his memorization (ḥafẓ), character (sha'n) and eloquence of speech"<sup>60</sup>

"and [people] from Khurāsān, 'Irāq and Ḥijāz travelled to him"<sup>61</sup>

Abū al-Qāsim Al-Qushayrī<sup>62</sup> also comments on al-Juwaynī saying:

"If Imām al-Ḥaramayn claims that he is a prophet, his words would not require any miracle [to prove]".<sup>63</sup>

Although some of the comments above are exaggeration, the position of al-Juwaynī as a respected, well-known and capable scholar in his time is clear.

Al-Juwaynī died in 478 A.H./1085 C.E. in Bushtinqān at

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<sup>59</sup> He is Abū Muḥammad 'Abdullāh b. Yūsuf al-Jurjānī, an expert of ḥadīth, a jurist, d. 489 A.H./1096 C.E. (Subkī's Tabaqāt, vol. 5, pp. 94 - 95)

<sup>60</sup> Subkī's Tabaqāt, vol. 5, p. 173

<sup>61</sup> Ibid.

<sup>62</sup> He is 'Abd al-Karīm b. Hawāzin Abū al-Qāsim al-Qushayrī, died in 465 A.H./1073 C.E. (EI(S), p. 287)

<sup>63</sup> Subkī's Tabaqāt, vol. 5, p. 174

the age of 59.<sup>64</sup>

## 2. Historical Background to al-Juwaynī's Doctrine of the Imāmate

### 2.1. Political

Probably the best way to understand the political conditions during this period is by looking at two main elements i.e. the breaking up of the Islamic Empire and the main forces which played important roles and caused political conflicts at that time. These forces are the Abbasid Caliphate, the Fāṭimids, the Buyids and the Saljūqs.

#### 2.1.1. The Breaking Up of the Islamic Empire

The fifth century represents the summit of the breaking up of the Islamic empire into small dynasties which were controlled by the amīrs (leaders of the Muslims in restricted areas) from different groups and sects.<sup>65</sup>

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<sup>64</sup> Subkī's Tabaqāt, vol. 5, p. 181, Wafayāt, vol. 3, p. 169, al-Bidāyah, vol. 12, p. 138, al-Nujūm, vol. 5, p. 121, Mu'jam, vol. 2, p. 224, the date of al-Juwaynī's death, 499 A.H./1105 C.E. which is given by Ann K. S. Lambton in her State and Government in Medieval Islam, Oxford, 1980, p. 165, is wrong as all biographers who wrote about al-Juwaynī agreed that the date of al-Juwaynī's death is 478 A.H./1085 C.E. (See The Origination, p. 12)

<sup>65</sup> See Burhān, p. 21, Fiqh, p. 36, p. 53, al-Ghiyāthī (1), p. 25 mīm  
See also Imām al-Haramayn, p. 47



These amīrs normally gained their power by force.<sup>66</sup> During this period, the political conditions in the Islamic world were in chaos.<sup>67</sup>

The political conditions during this period were the result of the political development in the Islamic World since the early second century (A.H). The breaking up of the Islamic Empire had started with the establishment of the Umayyad Dynasty in Spain in 138 A.H./756 C.E.. This dynasty survived until 422 A.H./1031 C.E. and was afterwards succeeded by various local amīrs and ethnic groups until 897 A.H./1492 C.E..<sup>68</sup>

After the establishment of the Umayyad Dynasty in Spain, many more dynasties were established afterwards from time to time in every part of the Islamic Empire. In the western part of the empire, for example, there were the Idrisid dynasty in Morocco (172 A.H./788 C.E. - 314 A.H./926 C.E.)<sup>69</sup>, the Aghlabid dynasty in Tūnis (184 A.H./800 C.E. - 296 A.H./909 C.E.)<sup>70</sup> and the Fāṭimid dynasty in North Africa, Egypt and Syria (297 A.H./909 C.E. - 567 A.H./1171

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<sup>66</sup> See Imām al-Ḥaramayn, p.47

<sup>67</sup> The Origination, p.22

<sup>68</sup> Cf. Islamic Dynasties, pp. 11 - 19, Cf. Imām al-Ḥaramayn, p. 47

<sup>69</sup> Cf. Ibid., pp. 20 - 21

<sup>70</sup> Cf. Ibid., pp. 24 - 25

C.E.)<sup>71</sup> In the eastern part of the empire, in Khurāsān, there were the Ṭāhirid dynasty (205 A.H./821 C.E. - 259 A.H./873 C.E.)<sup>72</sup> and the Ghaznawid dynasty (366 A.H./999 C.E. - 582 A.H./1186 C.E.)<sup>73</sup> which broke away from the Sāmānid Dynasty (204 A.H./819 - 389 A.H./999 C.E.)<sup>74</sup>, Buyid Dynasty in Persia and Iraq (320 A.H./932 C.E. - 454 A.H./1062 C.E.)<sup>75</sup> and Saljūq Dynasty in Persia, Iraq, Syria and Kirman (429 A.H./1038 C.E. - 590 A.H./1194 C.E.)<sup>76</sup>.

As to the sects, these different dynasties adhered to different sects. For examples, The Umayyads in Spain, the Aghlabids, the Ṭāhirids, the Sāmānids, the Ghaznawids and the Saljūqs adhered to Sunnism, whereas the Idrisid, the Fatimids and the Buyids adhered to different sub-sects of Shī'ism.

Due to these different sects and sub-sects, there were always religious and political conflicts between these different dynasties. The religious and political conflict did not only occurred between the Sunnites dynasties and

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<sup>71</sup> Cf. Ibid., pp. 46 - 48

<sup>72</sup> Cf. Ibid., pp. 101 - 102

<sup>73</sup> Cf. Ibid., pp. 181 - 183

<sup>74</sup> Cf. Ibid., pp. 101 - 102

<sup>75</sup> Cf. Ibid., pp. 94 - 97

<sup>76</sup> Cf. Ibid., pp. 115 - 118



the Shī'ite dynasties such as the conflict between the Saljūqs and the Buyids, and between the Saljūqs and the Fatimids but also between the Shī'ite dynasties themselves. It is known that the Buyids in the east part of the Islamic empire was not on good terms with the Fāṭimids in the East.

## 2.1.2. The Contemporary Political Forces

### 2.1.2.1. The 'Abbāsīd Caliphate

As mentioned earlier, the most probable period of life of al-Juwaynī was between 419 A.H./1028 C.E. until 478 A.D./1085 C.E. This means that the life of al-Juwaynī coincided with the period of three 'Abbāsīd caliphs in Baghdad as when he was born, the 'Abbāsīd caliph was al-Qādir (381 A.H./991 C.E. - 422 A.H./1031 C.E) and when he died in 478 A.H./1085 C.E., the 'Abbāsīd caliph was al-Muqtadī (467 A.H./1075 C.E - 487 A.D./1094 C.E.). The caliph between the two caliphs was al-Qā'im who was caliph between 422 A.H./1031 and 467 A.H./1075 C.E."

At the time when al-Juwaynī was born in 419 A.H./1085 C.E., the 'Abbāsīd caliph, al-Qādir was already under the control of the Buyids who entered Baghdad since 334 A.H./945 C.E.. The Buyids controlled Baghdad until 447

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<sup>77</sup> See Ibid., p.7

A.H./1055 C.E. when they were overthrown by the Saljūqs who entered Baghdad then.<sup>78</sup> Since the entrance of the Buyids, the 'Abbāsīd caliphs had lost their temporal power. The only power they had was moral and spiritual influence. However, the 'Abbāsīd caliphs were given religious power by the Saljūq after their entrance in 447 A.H./1055 C.E..<sup>79</sup>

#### 2.1.2.2. The Fāṭimids

As earlier mentioned, the Fāṭimids are a dynasty who reigned in North Africa and Egypt from 297 A.H./909 C.E. - 567 A.H./1171 C.E.. The Fāṭimids claimed to be descent of 'Alī. However, the enemies such as the Sunnites denied their claim and declared that they were impostors.<sup>80</sup> Among the Sunnite scholars who denied the descent of the Fāṭimids from 'Alī was al-Juwaynī himself<sup>81</sup>. The Buyids also denied this claim.<sup>82</sup> Probably due to this reason, the Fāṭimids failed to reach to understanding with the Buyids.<sup>83</sup>

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<sup>78</sup> See Islamic Dynasties, p.9, Imām al-Haramayn, p. 48, Cambridge History of Iran, p. 36, 45, 47, Makdisi, George, History of Eleventh Century of Iran, Hampshire, 1990, p. 155, p.163

<sup>79</sup> Ibid.

<sup>80</sup> See EI(2), vol. 3, p. 850, Cf. Islamic Dynasties, p. 46

<sup>81</sup> See al-Ghiyāthi(1), pp. 80 - 81

<sup>82</sup> See EI(2), vol. 2, p. 856

<sup>83</sup> See Ibid., p. 854

In the politico-religious field, the Fāṭimids adhered to Isma'īlism and was anti Sunnism and Khārijism. In their propaganda, already in their African period, the Fāṭimids proclaimed aloud that universal sovereignty was given to them by divine decree and that they were called to displace the Umayyad of Spain as well as the 'Abbāsids of Baghdad..."<sup>84</sup> In the North Africa, the Fāṭimids fought against the Sunnites and the Khārijites and it was always their intention to enter Baghdad, the capital of the 'Abbāsid caliphate at that time."<sup>85</sup> In a statement to a Byzantine ambassador in Cairo, a Fāṭimid ruler, al-Mu'izz wrote that on the ambassador's next visit, the ambassador would find him in Baghdad."<sup>86</sup> What he meant was, it was his intention and confidence that one day the Fāṭimids would win against the Sunnite 'Abbāsid caliph in Baghdad. In achieving their ambition to enter Baghdad, the Fāṭimids sent their emissaries throughout the 'Abbāsid domains propagating their religious political views and seeking supporters."<sup>87</sup>

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<sup>84</sup> Ibid., pp. 855 - 856, Cf. W.M. Watt, Islamic Political Thought, Edinburgh, 1968, p. 113

<sup>85</sup> See Ibid., p. 855

<sup>86</sup> See Ibid.

<sup>87</sup> See W.M. Watt, op. cit., 113



### 2.1.2.3. The Buyids

The "Buyid" comes from Buwayh or Buyeh, the father of the three brothers, 'Alī, al-Ḥasan and Aḥmad who founded the dynasty. 'Alī, al-Ḥasan and Aḥmad, each of the them ruled in different province(s) i.e. Fars, Jibāl, and Kirman and Khuzistan respectively.<sup>88</sup> They belonged to the population of Dylamites and adhered Twelvers Shi'ism when they converted to Islam.<sup>89</sup>

In 334 A.H./945 C.E., The Buyids lead by Ahmad entered Baghdad and captured power from the Sunnite 'Abbāsid Caliph.<sup>90</sup> The Buyids controlled the 'Abbāsid caliphate 110 years.<sup>91</sup>

However, when the Buyids entered Baghdad, although they were Shi'ite, they did not overthrow the Sunnite 'Abbāsid caliph. Although the fact that the Buyid did not respect the 'Abbāsid caliph, they still kept the post of the caliphate in the hands of the 'Abbāsid caliph due to some reasons for their own interests. Firstly, the Buyids realized that they, as Shi'ites, were minority in the

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<sup>88</sup> See EI(2), vol. 1, p. 1350, See also, Islamic Dynasties, p. 95

<sup>89</sup> See EI(2), vol. 1, p. 1350, See also, Islamic Dynasties, p. 95

<sup>90</sup> See Islamic Dynasties, p. 95

<sup>91</sup> Ibid.

Islamic world. The Sunnites were the majority. The destruction of the Sunni caliphate in Baghdad would lead the Sunnites in other parts of the Muslim world to appoint another Sunni caliph. The establishment of the new Sunni caliphate would create new enemy. Therefore, keeping the existing caliph without power was better for their interest to prevent the Sunnites from appointing a new caliph.<sup>92</sup> Secondly, the 'Abbāsid caliph was, at that time, recognized by the whole Muslim world. The presence of the 'Abbāsid caliph could be utilized as a proof of the legitimacy of their authority in the Sunni State.<sup>93</sup> Thirdly, the presence of the 'Abbāsid caliph also would strengthen the Buyid diplomatic relations with the world outside by the weight of the respected moral authority which the Sunni amīrs still enjoyed by right.<sup>94</sup>

By the capture of the power of the 'Abbāsid caliphate by the Buyids, not only all of 'Alī, al-Ḥasan and Aḥmad were given each new titles (laqabs) of 'Imād al-Dawlah, Rukn al-Dawlah and Mu'izz al-Dawlah respectively<sup>95</sup> but, as early mentioned, the 'Abbāsid caliph also recognized them as legitimate amīrs ruling the provinces, including Baghdad,

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<sup>92</sup> See EI(2), vol. 1, p. 1350

<sup>93</sup> See Ibid.

<sup>94</sup> See Ibid.

<sup>95</sup> EI(2), vol. 1, p. 1350



on his behalf. From then, as earlier mentioned, the 'Abbāsid caliph no longer had temporal powers except moral and spiritual influence. All temporal powers, including the powers over the army were transferred to the Buyid amīrs.<sup>96</sup>

The functions of the caliph were now only confined to the administration of his goods and the organization of the palace, the representative duties which devolved upon the caliph, the control of the good works and religio-legal life of the Sunnites and a certain moral share in the administration of Baghdad.<sup>97</sup> The caliph received small allowance which was taken from the public fund by the Buyid amīr. This practice is in contrast to the practice prior to the capture of the Buyids whereby the caliph administered his allowance by himself.<sup>98</sup>

#### 2.1.2.4. The Saljūqs

The Saljūqs were originally a family chiefs in Qinit clan of the Oghuz Turkish people whose name was in the steppes north of the Caspian and Aral Seas. They became Muslims towards the end of the tenth century (C.E) and entered the Islamic world in Khwarazm and Transoxania. Due

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<sup>96</sup> See p. 17 of this chapter, See also EI(2), vol. 1, p. 1353

<sup>97</sup> EI(2), vol. 1, p. 1350

<sup>98</sup> See Ibid., p. 1353

to their greatness, from Khwarazm and Transoxania, they managed to expand their rule to Iraq, Kirman, Syria and Asia Minor."<sup>99</sup> The greatness of the Saljūqs is clearly shown in a description by Rawandi about the Saljūq:

"...In the lands of the Arabs, Persians, Byzantines, and the Russians, the sword is in the hands of the Turks, and fear of their swords is firmly implanted in all hearts!"<sup>100</sup>

The first sultan of the Saljūqs was Toghril Beg. He proclaimed himself as the sultan of Naysābūr after he captured Naysabūr in 429 A.H./1038 C.E..<sup>101</sup>

As the Saljūqs adhered Sunnism, for Islam, the rise of the saljūqs meant the victory of the Sunnite creed as far as their power stretched, over the Shi'ite tendency which had been gaining more and more ground under the Buyids and Fatimids.<sup>102</sup> As the crusade against the Shi'ite Buyids, in 447 A.H./1055 C.E., the Saljūqs entered Baghdad and put an end to the Buyid rule there.<sup>103</sup> In 449 A.H./1058 C.E., the Saljūq sultan who put an end to the Buyid rule in Baghdad

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<sup>99</sup> See EI(1), vol. 4, p. 208

<sup>100</sup> Cambridge History of Iran, vol. 5, p.15

<sup>101</sup> See Islamic Dynasties, p. 116, See also Cambridge History of Iran, vol. 5, p.23

<sup>102</sup> EI(1), vol. 4, p. 210

<sup>103</sup> See Makdisi, George, op. cit. p. 155 and p. 163, see also Cambridge History of Iran, vol. 5, p. 45 and p. 47

was given the title "Rukn al-Dawlah" (the Pillar of the State) and "Malik al-Mashriq wa al-Maghrib" (the King of the east and the west) and recognized by the 'Abbāsid caliph as a legitimate sultān to rule on his behalf.<sup>104</sup>

By the entrance of the saljūqs into Baghdad, the position of the 'Abbāsid caliph, to some extent, was improved compared to his position during the Buyids rule. Although the Saljūqs did not return back the temporal power to the 'Abbāsid caliph, they returned the religious power to him.<sup>105</sup> This division of powers created a separation of powers between the Saljūqs and the 'Abbāsid caliph. The sultān conducted temporal affairs and the caliph conducted religious affairs.<sup>106</sup> As two separate bodies, the caliph was allowed to have his own wazīr and the sultān his own.<sup>107</sup> This is in contrast to the practice by the Buyids that the wazīr in the 'Abbāsid caliphate should be responsible directly to the Buyid amīr.<sup>108</sup> The Saljūqs still recognized the 'Abbāsid caliph as the head of the orthodox Islam whom they were called upon to defend with

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<sup>104</sup> See Cambridge History of Iran, vol. 5, p. 4

<sup>105</sup> See Ibid., p. 48

<sup>106</sup> See Klausner, Carla L., The Seljuk Vezirate, Harvard University Press, Cambridge, 1973, p. 6, See also Cambridge History of Iran, vol. 5, p. 48

<sup>107</sup> See Klausner, op. cit., p. 28

<sup>108</sup> Klausner, Ibid., p. 27



sword. Due to this reason, the Saljūqs who were led by their great wazīr, Nizām al-Mulk, took energetic steps against the dangerous activities of the Isma'ilites.<sup>109</sup> As the head of the Muslim community, the coin in the state carried the caliph's name.<sup>110</sup> Also under the Saljūqs, the caliphs were no longer arbitrarily deposed as they had been on occasion under the Buyids, and their election was rarely influenced by the Saljūq sultāns.<sup>111</sup> However, the position of the Saljūq sultān was still superior to the position of the 'Abbāsīd caliph.<sup>112</sup> It was among the practice of some saljūq sultāns that they controlled the caliph through marriage relationship<sup>113</sup> and nomination of the wazīr of the caliph.

As to the internal organization of the Saljūq system of government, the sultān is considered as the head of the government. However, the sultān did not conduct all the affairs in the government by himself. Most of his duties were delegated to a wazīr. A wazīr under the Saljūq system of government had the powers in almost all fields including

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<sup>109</sup> See EI(1), vol. 1, p. 210

<sup>110</sup> See Klausner, op. cit., p. 29

<sup>111</sup> Ibid., p. 28

<sup>112</sup> See Klausner, op. cit., p. 6

<sup>113</sup> As an example, the 'Abbāsīd caliph al-Muqtadī was a son-in-law to Alp Arslān (See Cambridge History of Iran, p. 61)

financial, judicial, religious, ceremonial and military.<sup>114</sup> In financial field, the wazīr was the head of the financial administration,<sup>115</sup> the head of justice<sup>116</sup> and the head of religion.<sup>117</sup> The wazīr was the representative of the sultān on ceremonial occasion.<sup>118</sup> The wazīr was the one had the control over the army and was responsible for recruiting the troops. The wazīr was also often called by the sultān to dispatch the army or to undertake expeditions by himself.<sup>119</sup> Besides, the wazīr also was given responsibility as a patron or atabeg to a sultān or amīr. Some Saljūq sultān such as Malik Shah, when they were appointed, they were still young. Malik Shah, for example, when he was appointed as the sultān of the saljūqs, he was only eighteen years old.<sup>120</sup> In such a case, the wazīr as the patron to the sultān or amīr was also responsible to educate and upbringing the sultān or amīr, to control him and to prevent rebellion in the area under the authority of the sultān or the amīr.<sup>121</sup> The atabeg of Malik Shah was Niẓām

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<sup>114</sup> See Klausner, op. cit. p. 39

<sup>115</sup> See Ibid.

<sup>116</sup> Ibid. pp. 40 - 41

<sup>117</sup> Ibid. p. 41

<sup>118</sup> Ibid. p. 42

<sup>119</sup> op. cit. p. 40

<sup>120</sup> See EI(2), vol. 6, p. 273

<sup>121</sup> See Klausner, op. cit. p. 85



al-Mulk.<sup>122</sup> With all these great powers given to the wazīr, it was the wazīr as chief deputy of the sultān who became crucial figures within the structure of the Saljūq government.<sup>123</sup> As Harold Bowen says when describing the power of the Saljūq wazīr to Alp Arslan and Malik Shah, Nizām al-Mulk:

"He (Nizām al-Mulk) was the real power of the Saljukid (Saljūq) empire"<sup>124</sup>

As the strongest man in the Saljūq empire, it is appropriate that a brief description about Nizām al-Mulk to be mentioned in this introduction.

The real name of Nizām al-Mulk is al-Ḥasan b. ʿAlī b. Ishāq b. al-ʿAbbās al-Ṭūsī. He was born in Radkan, a village near Ṭūs in 408 A.H./1017 C.E.<sup>125</sup> His father was a Ghaznawid government officer.<sup>126</sup> When most of Khurāsān fell into the Saljūqs, Nizām al-Mulk was a Ghaznawid government officer. However, after four years in service with the Ghaznawid government, he later joined the Saljūq government. First he joined Chaghri Beg in Balkh, then later joined Alp Arslān

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<sup>122</sup> Ibid. p. 84

<sup>123</sup> Ibid. p. 82

<sup>124</sup> EI(2), vol. 3, p. 933

<sup>125</sup> See Imām al-Haramayn, p. 56

<sup>126</sup> EI(2), vol. 3, p. 932

in Eastern Khurāsān. When Ibn Shahdan, the wazīr of Alp Arslān died, Niẓām al-Mulk was appointed by Alp Arslān as his wazīr succeeding Ibn Shahdan.<sup>127</sup> When Toghril Beg, the first Saljūq sultān died, he was succeeded by Alp Arslān in 455 A.D./1063 C.E..<sup>128</sup> At the beginning, Alp Arslan still kept al-Kundurī,<sup>129</sup> the wazīr of Alp Arslān as his wazīr. However, after a month of becoming the sultān of the Saljūqs, Alp Arslān dismissed al-Kundurī and appointed Niẓām al-Mulk as his new wazīr.<sup>130</sup> Al-Kundurī was shortly afterwards banished to Marw al-Rūd, where ten months later he was beheaded.<sup>131</sup> In 465 A.H./1072 C.E., when Alp Arslān assassinated, he was succeeded by Malik Shāh<sup>132</sup>. Malik Shah kept Niẓām al-Mulk as his wazīr, as well as his atabeg for twenty years until Niẓām al-Mulk's death in 485 A.H./1092 C.E.<sup>133</sup> due to an assassination by a Daylamīte youth of the Isma'īlites.<sup>134</sup>

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<sup>127</sup> Ibid.

<sup>128</sup> See Cambridge History of Iran, vol. 5, p.54

<sup>129</sup> Al-Kundurī is the wazīr of the first Saljūq sultān tughril. His full name is Muḥammad b, Maṣṣūr b.. Muḥammad Abū Naṣr, extremely against the Ash'arites, died in 456 A.H./1064 C.E. (al-Ghiyāthī(1), p. 42 mim, Fiqh, p. 44)

<sup>130</sup> See EI(1), vol. 3, p. 933, Cf. p. 8. of this chapter.

<sup>131</sup> Ibid.

<sup>132</sup> See EI(2), vol. 6, p. 273

<sup>133</sup> See Cambridge History of Iran, vol. 5, p. 55 and p. 68

<sup>134</sup> See Cambridge History of Iran, vol. 5, p. 102, Cf. EI(1), vol. 3, p. 935

As to his theological sect and school of law, Nizām al-Mulk is an Ash'arite and a Shāfi'ite and he is a strong supporter of Ash'arism and Shāfi'ite school of law.<sup>135</sup> It was during his time that Ash'arism became the pre-dominant theology of the Shāfi'ites throughout the Muslim world.<sup>136</sup> In supporting Ash'arism and the Shafi'ite school of law, during his ministership, he built al-Nizamiyyah madrasahs to teach Ash'arite theology and Shāfi'ite fiqh.<sup>137</sup>

## 2.2. Religious

From the religious aspect, the fifth century of Hijrah (11th century of C.E) was also known as the period of conflict between sects and schools of laws in Islam.<sup>138</sup> A lot of religious dissensions (fitan) between these sects and schools of laws occurred during this period especially in Baghdad and Naysābūr, especially between the Shi'ites and the Sunnites (al-Sunniyyah), between the Ash'arites and the Ḥanbalites, between the Shāfi'ites and the Ḥanbalites, and between the Shāfi'ites and the Ḥanafites. The following are some of the examples.

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<sup>135</sup> Bulliet, Richard W., The Patricians of Nishapur, Harvard University Press, Cambridge, 1972, p. 45

<sup>136</sup> Madelung, op. cit., pp. 33- 34

<sup>137</sup> See Cambridge History of Iran, vol. 5, p. 72, Cf. Makdisi, op. cit. p. 159

<sup>138</sup> Fiqh, p. 39



In Baghdad, at least there were two dissensions occurred between Sunnites and Shī'ites of al-Karkh. In 443 A.H./1051 C.E., a dissension occurred between these two factions due to an inscription written by ahl al-Karkh on the fishermen's gate (bāb al-sammākīn):

"Muḥammad and 'Alī are the best of mankind".

However, Some Sunnites (al-Sunniyyah) rejected the statement and said that the inscription was:

"Muḥammad and 'Alī are the best mankind. Whoever agrees with it, he is a thankful person (shakūr) and whoever does not agree with it, he is unbeliever"

The people of Karkh denied the additional claimed statement. In answering to the claim by the Sunnites, ahl al-Karkh said that they never made such additional statement in their inscription. The result of this dissension was a killing of a Hāshimite and chaos in the town.<sup>139</sup> Another dissension between these two factions occurred in 445 A.H./1052 C.E.. This dissension occurred due to a killing of a Shī'ite man ('alawī) in Karkh by some Turkish officers (assumably Sunnites) who tried to solve a problem of dissension which had become worse between the Shī'ites and

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<sup>139</sup> Cf. al-Kāmil, vol. 8, pp. 301 - 302, Cf. also The Origination, pp. 23 - 24



the Sunnites there. Due to this killing, ahl al-Karkh became angry and fought against the Turkish officers. The result of this dissension was a serious fighting (qitāl shadīd) between Shī'ites and others of the public of Karkh and the Turkish officers, and many bazaars were burnt.<sup>140</sup>

In 447 A.H/1055 C.E., a dissension occurred between Shāf'ite scholars and Ḥanbalite scholars due to their disagreement on some legal rules. One of the rules was whether "Bismillāh al-Raḥmān al-Raḥīm" (In the name of God, the Merciful and the Compassionate) is allowed to be spoken out loud in prayers. The Ḥanbalite scholars hold the view that it was not allowed but the Shāf'ite scholars it was allowed. Due to their disagreement, the Ḥanbalites went to a mosque and prevented the Shāfi'ite imām from reciting the "Bismillāh" out loud.<sup>141</sup>

In Naysābūr, disorders spread between 443 A.H/1051 C.E. and 447 A.H./1055 C.E. The dissension which caused the disorders is known in Islamic history as fitnat al-Kundurī. The reason for the occurrence of the dissension was the appointment of Abū Sahl al-Muwaffaq<sup>142</sup>, who was a Shāfi'ite, at the age of seventeen as the chief of the

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<sup>140</sup> Cf. al-Kāmil, vol. 8, p. 312, Cf. also The Origination, pp. 24 - 25

<sup>141</sup> Cf. al-Kāmil, p. 320, Cf. also, The Origination, p. 25

<sup>142</sup> He is Muḥammad b. Ḥibbatullah b. Muḥammad b. al-Ḥusayn, died in 456 A.H./1064 C.E.

Shāfi'ite school of law (madhhab). The appointment was opposed by al-Kundurī, the wazīr of Toghril Beg, who was a Ḥanafite. The crisis led to a more serious dissension. An order from the sultān, under the influence of al-Kundurī, went out for the arrest of Abū al-Qāsim al-Qushayrī, the ra'īs (mayor) Abū al-Faḍl Aḥmad al-Furātī, al-Juwaynī and Abū Sahl al-Muwaffaq. The first two were captured and imprisoned in a citadel. Al-Juwaynī escaped and made his way to exile in Arabia by way of Kirman. Abū Sahl chose to stay and fight. He withdrew to the area of Bakharz southeast Naysābūr and gathered together an armed force of his personal retainers. Then he returned to the city and a battle was met. Abū Sahl succeeded in freeing the prisoners. After the success, Abū Sahl and the prisoners left for Ustuvā and from there, Abū Sahl left again for Rayy. From Rayy Abū Sahl tried again to appeal to the sultān to call off the persecution. His trial failed and Abū Sahl was arrested and imprisoned. However, he was released again later on and went to Arabia in exile with other Ash'arites. There were some four hundred Ash'arites found their way into exile due to the dissension. The state of things in Naysābūr became stable when Alp Arslān, the second Saljūq ruler sat on the throne and Niẓām al-Mulk became his wazīr. Al-Kundurī was executed. Those who left Naysābūr due to the dissension, including al-Juwaynī, were

called to return back to Naysābūr.<sup>143</sup>

From the various incidents mentioned above, it shows that the religious life of the Muslims during this period was also in chaos. Although the greatest challenge to the Sunnites who were the majority of the Muslims during this period was Shī'ism,<sup>144</sup> the religious dissensions which occurred during this period were not only between the Shi'ites and the Ash'arites but also between the Sunnite schools of law (madhhabs) themselves such as the dissension between the Shāf'ites and the Ḥanbalites and the Shāfi'ites and the Ḥanafites.

These are the political conditions and the religious life of the Muslims during the fifth century of Hijrah (11th century C.E).

### 2.3. Intellectual

Nevertheless, the intellectual life of the Muslims during this period shows the contrast to the political conditions and their religious life. Despite the breaking-up of the Islamic Empire into small dynasties controlled by

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<sup>143</sup> See Bulliet, op. cit., pp. 122 - 123, Cf. Madelung, op. cit., pp. 33 - 34, Cf. also note no. 30

<sup>144</sup> Khan, Kamarudddin, The Political Thought of Ibn Taymiyyah, Delhi, 1988, p. 19



different groups and different sects of the Muslims and their chaotic religious life, knowledge had flourished and spread everywhere in the broken-up Islamic World, especially in Naysābūr and Baghdad. The period was the most productive one in terms of intellectual aspect of Islam since the beginning of the establishment of the Islamic state.<sup>145</sup> The conflict between the different sects and school of laws provoked the development of knowledge. Every different small dynasty encouraged the establishment of its own madrasahs (schools), scholars, men of literatures and poets as a part of the pride of its ruler.<sup>146</sup>

In the west part of the Islamic world, in Egypt, there had already existed Azhar Mosque of the Fātimid general Jauhar and the Caliph al-Mu'izz which was founded in 359 A.H./970 C.E.<sup>147</sup> and Dār al-Hikmah of the Caliph al-Ḥākim, which was founded in 395 A.H./1005 C.E. as centers of Shi'ite propaganda.<sup>148</sup>

In the east part of the Islamic empire, there were numerous madrasahs built by the Saljūq rulers, by their

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<sup>145</sup> See Burhān, p. 21, Fiqh, p. 37 and p. 53, al-Ghiyāthī(1), p. 25 mīm, al-Irshād, p. wāw

<sup>146</sup> See Burhān, p. 21, See also Fiqh, p. 38, See also al-Ghiyāthī(1), p. 25 mīm

<sup>147</sup> Cambridge History of Iran, vol. 5, p. 71

<sup>148</sup> Cambridge History of Iran, vol. 5, p. 71 and p. 215



ministers and others. There was a madrasah built by Toghril Beg in Naysābūr; Chaghri Beg Dāūd built a madrasah in Marv; Alp Arslān in Baghdad; Muḥammad b. Malik Shah in Isfahān, and Toghril b. Muḥammad in Hamadān.<sup>149</sup>

However, the most famous madrasahs during this period was al-Nizāmiyyah madrasahs which were built by Nizām al-Mulk. These madrasahs were not only built in Naysābūr, but also in other places such as Baghdad, Amul, Mosul, Herat, Damascus, Jazīrat Ibn ʿUmar, Balkh, Ghazna, Marv and Basrah.<sup>150</sup> Al-Nizāmiyyah madrasahs were among the example of the madrasahs which were built for a particular sect and a particular school of law. As earlier mentioned al-Nizāmiyyah madrasahs were built only to teach Ashʿarite theology and Shāfiʿite fiqh. In the al-Nizāmiyyah madrasah in Baghdad, for instance, Nizām al-Mulk, who was himself a Shāfiʿī, laid down that the mudarris (professor), waʿiz, and librarians of the madrasah should be Shāfiʿites. The teaching programme of the madrasah comprised the Qurʾān, ḥadīth, Islamic jurisprudence (uṣūl al-fiqh) according to Shāfiʿite school of law, kalām (theology) according to Ashʿarite doctrine, Arabic language and literature, adab (belles letter), mathematics and farāʾid (laws of

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<sup>149</sup> Ibid., pp. 215 - 216

<sup>150</sup> Ibid., pp. 215 - 216

inheritance).<sup>151</sup>

The purposes of the establishment of the madrasahs by Nizām al-Mulk were mainly political and religious and i.e. firstly is to provide government officials trained in the tenets of orthodoxy who would replace the former secretarial classes and implement his policies. Secondly is to control the masses and combat the spread of the Ismā'īlite sect, which had begun to threaten the existence of the state, by using the scholars who were educated in the madrasahs.<sup>152</sup>

During this fifth century also, many learned scholars appeared from different sects and schools of laws in variety fields of knowledge, especially in Naysābūr.

Among the Ash'arite scholars, al-Juwaynī himself, a scholar of kalām and a Shāfi'ite jurist, Abū Turāb al-Maghārī (died in 492 A.H./1098 C.E.), also, presumably, a Shāfi'ite jurist, Abū Bakr al-Bayhaqī (died in 458 A.H/1065 C.E.), Abū Muḥammad al-Muḍārī (died in 486 A.H./1093 C.E.), 'Alī b. Aḥmad b. Aḥmad b. 'Alī al-Wāḥidī (died in 468 A.H./1075 C.E.) and Abū al-Ḥasan al-Bākhari (died in 467

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<sup>151</sup> Cambridge History of Iran, p. 216, Cf. Klausner, op. cit. p. 64

<sup>152</sup> Ibid., p. 214, Cf. Klausner, op. cit. p. 5 and pp. 63 - 64

Among the Mu'tazilite scholars, there were Ibn Yūsuf al-Qazwīnī (died in 482 A.H./1089 C.E.), a mufasssīr (interpreter) of 700 volums. Ibn Yūsuf al-Qazwīnī had given Niẓām al-Mulk a book of ten volumes named "Gharīb al-Hadīth" and the book was kept in Niẓām al-Mulk's library.<sup>154</sup>

In the field of philosophy, there was Abū al-Ḥusayn b. ʿAbdullāh b. Sīnā who is known until now as Ibn Sīnā. Ibn Sīnā wrote many philosophical books such as Kitāb al-Mufāraqāt, Kitāb fī al-Aʿdād wa al-Uqūl, Fi al-Aflāk and Kitāb al-Mubdiʿat. Many of his books also were kept in al-Niẓāmiyyah library. Ibn al-Khayyām (died in 515 A.H./1122 C.E.) is another scholar of philosophy as well as a poet. He wrote al-Rubāʿiyyāt, Mukhtasar fī al-Tabīʿiyyāt, Risālah fī al-Wujūd and Risālah fī al-Kawn wa al-Taklīf.<sup>155</sup>

In the field of sufism, there were, for instance, Abū ʿAlī al-Ḥasan b. ʿAlī al-Daqqāq (died in 415 A.H./1024 C.E.) and Abū al-Qāsim al-Qushayrī.<sup>156</sup>

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<sup>153</sup> See Imām al-Ḥaramayn, p. 62, See also The Origination, p. 29

<sup>154</sup> See Imām al-Ḥaramayn, p. 63, See also The Origination, pp. 28 - 29

<sup>155</sup> See Imām al-Ḥaramayn, p. 63, The Origination, p. 30, See also al-Baʿalbaki, Munir, al-Mawrid, 1981, p. 66 of "Muʿjam al-Iʿlām".

<sup>156</sup> See The Origination, p. 31



In addition to the above reason, in some areas of the Islamic world, history also played role in the flourishing of knowledge. Khurasan, for example, was previously inherited by various civilizations and religions such as Persian, Hinduism and Grecism which survived behind the names of philosophy and so on. This fact attracted many scholars to come to the area especially Naysābūr, the most flourishing city of Khurāsān at that time.<sup>157</sup>

Other than the reasons which are mentioned above there are more other reasons which supported the flourishing of knowledge during this period. As summarized by Muḥammad b. ʿAlī ʿUthmān Ḥarbī, the other reasons are:

- (i) the maturity of the Muslim intellectuality in research and writing after undergoing different stages since the beginning of Islam;
- (ii) the translation of Greek, Persian and Indian books into Arabic;
- (iii) the emigration of Muslim scholars to different places either due to the desire to seek knowledge or due to religious dissensions in their home country as from this emigration,

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<sup>157</sup> See Burhān, pp. 21 - 22, See also, Fiqh, p. 53, See also al-Ghiyāthi(1), p. 26 mim



they took the opportunity to benefit from other great scholars wherever they met them;

(iv) the argument and discussion between different law schools; and

(vi) the religious fanaticism (al-ta'assub al-dīnī) which led every sect to prove its view with evidences.<sup>158</sup>

In this political, religious and intellectual backgrounds lived al-Juwaynī. There is no doubt that these political, religious and intellectual backgrounds had some effects on the thinking of al-Juwaynī. To see how this backgrounds affect his thought, the following chapters are the discussion on his doctrine of the imamate which will mainly be based on three works of al-Juwaynī i.e. Lam' al-Adillah (written between 438 A.H./1046 C.E. and 459 A.H./1066 C.E.)<sup>159</sup>, al-Irshād (written after 459 A.H./1066 C.E.)<sup>160</sup> and al-Ghiyāthī (between 465 C.E./1072 C.E. and 478 C.E./1085 C.E.).<sup>161</sup>

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<sup>158</sup> See Imām al-Haramayn, pp. 60 - 61

<sup>159</sup> The Origination, p. 110

<sup>160</sup> Ibid.

<sup>161</sup> as will be discussed bellow

### 3. Notes on al-Ghiyāthī

Since al-Ghiyāthī is the major work referred in this thesis, it seems important that a note about this work should be made.

#### 3.1. Definition

Al-Ghiyāthī is the name known for a compendium called Ghiyāth al-Umam fī Iltiyāth al-Zulam. It is al-Juwaynī's comprehensive compendium on political or constitutional thought.<sup>162</sup> The compendium contains three books. The first book deals with the imāmate. The second book deals with the rules which should be applicable to the Muslims during the period in which the post of the imāmate is vacant and the third book deals with the rules which should be applicable to the Muslims during the period in which mujtahidūn and the bearers of madhāhib do not exist.

#### 3.2. The Date of the Writing of al-Ghiyāthī

It is neither stated in any part of the compendium nor in any bibliographical source that al-Ghiyāthī was written in a certain date. There is no fact available to indicate

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<sup>162</sup> There is no dispute among the researchers the al-Ghiyāthī is the work of al-Juwaynī (See C. Brockelmann, Geschichte Der Arabischen Litteratur, Leiden, 1937, p. 673, al-Ghiyāthī(1), pp. 47 mim - 50 mim, The Origination, p. 57, pp. 90 - 93)

that the compendium was written in an exact date. However, what is certain from the facts and indications which can be found from al-Ghiyāthī and other al-Juwaynī works is that the compendium must have been written between 465 A.H./1073 C.E. - 478 A.D./1085 C.E..<sup>163</sup> This is based on the following grounds:

(1) As will be discussed later, al-Ghiyāthī was written for Niẓām al-Mulk. Niẓām al-Mulk was appointed as a wazīr by Alp Arslān after Alp Arslān had become the sultān in 455 A.H./1063 C.E..<sup>164</sup> Therefore, the compendium could not have been written before 455 A.H./1063 C.E.. It must be after the date.

(2) Al-Juwaynī has mentioned in his al-Ghiyāthī about the battle of Manzikert between the Saljūq and the Byzantine Emperor Romanus Diogenes. The battle occurred in 463 A.H./1071 C.E..<sup>165</sup> This fact indicates that it is definite that the compendium was written after 463 A.H./1071 C.E..

(3) Al-Juwaynī's duā' (prayers) "May God protect his

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<sup>163</sup> as has been mentioned earlier that al-Juwaynī died in 478 C.E./1085 C.E. (See Introduction, p. 13)

<sup>164</sup> EI(2), vol. 1, p. 420, al-Yazdī, Muḥammad b. Muḥammad b. ʿAbdullāh ibn al-Niẓām al-Ḥusaynī, ed. ʿAbd al-Naʿīm Muḥammad Ḥasanayn and others, Baghdad, al-ʿArāḍah fi al-Hikāyah al-Saljūqiyyah, 1979, p.49

<sup>165</sup> EI(2), vol. 1, p. 420



soul with His grace" which is meant for Alp Arslān, in al-Ghiyāthī<sup>166</sup> indicates that Alp Arslān had already died when al-Juwaynī wrote the compendium. Alp Arslān died in 465 A.H./1073 C.E..<sup>167</sup> Therefore, al-Ghiyāthī could not have been written before 465 A.H./1073 C.E..

### 3.3. Al-Ghiyāthī was Written for and Addressed to Nizām al-Mulk

Although al-Juwaynī does not mention explicitly in al-Ghiyāthī that al-Ghiyāthī was written for and addressed to Nizām al-Mulk, some facts which can be found in al-Ghiyāthī itself and other al-Juwaynī's works, indicate that the compendium was written for and addressed to Nizām al-Mulk. Among the facts is the use of the title "Ghiyāth al-Dawlah" and "Mawlānā" by al-Juwaynī in his writings for the one to whom the compendium was addressed. Regarding this, al-Juwaynī states in al-Ghiyāthī:

"Now is the stage to give the title to the compendium.

It has been known to the world that Ṣadr al-Ayyām and Maw'il al-Anām (the Supporter of the People) and the one who is the real supporter of Islam is called by names which his high qualities (ma'ānī) are greater than and of which his eminence surpasses. He is Ghiyāth al-Dawlah (the Saviour of the Country). When Ghiyāth al-Umam fī Iltiyāth al-Zulam is completed,

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<sup>166</sup> al-Ghiyāthī(1), p. 347, al-Ghiyāthī(2), p. 253

<sup>167</sup> EI(2), vol. 1, p. 421, EI(1), vol. 3, p. 933



let it be known as al-Ghiyāthī as the first one was known as al-Nizāmī"<sup>168</sup>

What al-Juwaynī means by "the first" here is that the book which he mentions earlier in al-Ghiyāthī<sup>169</sup> as he says:

"[Before this compendium], it has been preceded by the book al-Nizāmī...."

The book al-Nizāmī only survived in a part which is known as al-ʿAqīdah al-Nizāmiyyah.<sup>170</sup>

In presenting al-ʿAqīdah al-Nizāmiyyah to Nizām al-Mulk,<sup>171</sup> al-Juwaynī explicitly mentions Nizām al-Mulk's name in it and associates the name with the titles "Ghiyāth al-Dawlah" and "Mawlānā". Regarding this al-Juwaynī writes in al-ʿAqīdah al-Nizāmiyyah:

"God has given you your duties [oh] Mawlānā (our Master), Nizām al-Mulk, Sayyid al-Wuzarā' (the Master of the ministers), Ghiyāth al-Dawlah (the Saviour of the Country), Muʿtamad Amir al-Mu'minin (support of<sup>172</sup> the Commander of the Believers) - may God preserve your position"<sup>173</sup>

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<sup>168</sup> al-Ghiyāthī(1), p. 18

<sup>169</sup> Ibid., p. 7

<sup>170</sup> al-ʿAqīdah al-Nizāmiyyah, p. 4, al-Ghiyāthī(1), p. 7

<sup>171</sup> See al-ʿAqīdah al-Nizāmiyyah, pp. 7 - 8

<sup>172</sup> It should be noted that the ʿArabic text is in bracket.

<sup>173</sup> al-ʿAqīdah al-Nizāmiyyah, p. 7

Through out al-Ghiyāthī and al-ʿAqīdah al-Nizāmiyyah, al-Juwaynī uses the title "Mawlānā" when addressing his writings.<sup>174</sup> The fact that in al-ʿAqīdah al-Nizāmiyyah, the person referred to is clearly Nizām al-Mulk could suggest the same person is addressed in al-Ghiyāthī. This argument is further strengthened by the fact that Nizām al-Mulk is identified in al-ʿAqīdah al-Nizāmiyyah as Ghiyāth al-Dawlah and that is the title of the addressee in al-Ghiyāthī.

Nizām al-Mulk is also addressed as al-Majlis al-Sāmī<sup>175</sup> in al-ʿAqīdah al-Nizāmiyyah. The addressee of al-Ghiyāthī is also called al-Majlis al-Sāmī.<sup>176</sup> In al-ʿAqīdah al-Nizāmiyyah, al-Juwaynī promised al-Majlis al-Sāmī for whom it was written, that he was going to write a separate book on the imāmate instead of writing it as a part of al-Nizāmī and there is no other separate book of al-Juwaynī on the imāmate except al-Ghiyāthī. Regarding this al-Juwaynī states in al-ʿAqīdah al-Nizāmiyyah:

"I used to promise that I was going to write some sections (fusūl) on the imāmate, but then I decided to write a separate book on the imāmate for al-Majlis al-Sāmī."<sup>177</sup>

<sup>174</sup> al-Ghiyāthī(1), p. 369, p. 370, p. 381, p. 383 and 484, al-ʿAqīdah al-Nizāmiyyah, p. 16, p. 18, p. 46 and p. 59

<sup>175</sup> al-ʿAqīdah al-Nizāmiyyah, p. 68

<sup>176</sup> al-Ghiyāthī(1), p. 79

<sup>177</sup> al-ʿAqīdah al-Nizāmiyyah, p. 68

It has already been noted that Niẓām al-Mulk is described as "Mawlānā" in al-ʿAqīdah al-Niẓāmiyyah. This is also a term used for the addressee in al-Ghiyāthī.

All of these would seem to establish, beyond doubt, that al-Ghiyāthī was written and addressed to Niẓām al-Mulk. Also, possibly due to this reason, many parts of al-Ghiyāthī were written in beautiful poetic Arabic.

## CHAPTER ONE

### THE IMĀMATE AND ITS ESTABLISHMENT

#### 1. Definition of the Imāmate

In al-Ghiyāthī(1), al-Juwaynī defines the imāmate as

"a comprehensive and public leadership related to private and public matters in religious and worldly affairs. Its duty is to protect the country, to take care of the subjects, to perform da'wah (call to Islam) by argument and sword, to prevent deviation and injustice, to adjudicate between the oppressors and oppressed and to restore the rights from those who abstain (mumtani'in) from fulfilling them to the rightful owners".<sup>1</sup>

The imām is the person who holds the post of the imāmate - a comprehensive and public leader related to private and public matters in religious and worldly affairs with certain duties as above mentioned.

Although al-Juwaynī includes in his early writings sections on the imāmate in his books of 'ilm al-kalām (i.e. al-Irshad and Lam' al-Adillah), he states clearly in al-Irshad from the beginning when he writes on the imāmate that the topic of the imāmate is not of uṣūl al-i'tiqād.<sup>2</sup>

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<sup>1</sup> al-Ghiyāthī(1), p. 22

<sup>2</sup> See al-Irshād, p. 411



or ʿilm al-kalām. In al-Ghiyāthī he states that

"the imāmate is not one of the principles of belief (qawāʿid al-ʿaqāʾid) but it does constitute a comprehensive system of authority (wilāyah tammah)."<sup>3</sup>

He also states in his work Mughīth al-Khalq fī Bayān al-Aḥaqq,<sup>4</sup> that

"the issue of the imāmate is among the issues of the branches or derived laws (al-furūʿ)."<sup>5</sup>

This underlines his view that the imāmate is not an aṣl principle of Islam.

Al-Ghiyāthī is not a book on ʿilm al-kalām as classified by some researchers<sup>6</sup> but it is a book of fiqh.<sup>7</sup> Al-Ghiyāthī does not contain any main topic of ʿilm al-kalām. The possible reason for the inclusion of the topic of the imāmate in the books of ʿilm al-kalām in the early writings of al-Juwaynī, is probably similar to the reason used by the scholars who lived within the same period when

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<sup>3</sup> al-Ghiyāthī(2), p. 61

<sup>4</sup> a MS no. 458 (usūl al-fiqh) at Dār al-Kutub al-Miṣriyyah, Cairo.

<sup>5</sup> Ibid., f. 6

<sup>6</sup> For example Dr. Fawkiya Hussein Maḥmūd, The Origination, p. 59, See Lamʿ al-Adillah, ed. idem, p. 46, al-Kāfiyah, ed. idem, p.22

<sup>7</sup> Cf. Riʿfat ʿUthmān, Riyāṣah al-Dawlah fī al-fiqh al-Islāmī, Dār al-Kitāb al-Jāmiʿī, n.d., p.29

the conflict between madhhabs of Islam was at its height. Most of the writings by the Sunnīte scholars such as al-Ash'arī,<sup>8</sup> al-Bāqillānī<sup>9</sup> and al-Ghazālī<sup>10</sup> on 'ilm al-kalām are composed to refute the views of other Muslim groups such as the Shī'ites and the Mu'tazilites. These groups consider the topic of the imāmate as a part of 'ilm al-kalām. Based on this doctrine, they discuss this topic in the books of 'ilm al-kalām. Therefore, these writers argued against them by including sections on the imāmate in their works of kalām without actually saying whether this topic did or did not belong to 'ilm al-kalām.

As to the terminology used in his writings on the imāmate, al-Juwaynī is almost consistent in using the term "al-imām" to denote the person who holds the post of the leadership of all Muslims and the term "al-imāmah" (imāmate) as the name for the post.

However, in some places in his writings, al-Juwaynī

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<sup>8</sup> He is 'Alī bin Isma'īl Abū al-Ḥasan al-Ash'arī (260 - 320 A.H / 873/4 - 912/3 C.E), a theologian and the founder of the theological School of al-Ash'ariyyah. He used to be the best pupil of al-Jubba'i, a Mu'tazilite but later left Mu'tazilism and joined the Sunnites (Ahl al-Sunnah wa al-Jamā'ah) in 300 A.H / 912/3 C.E). (See EI(1), vol. 1, p. 694). An example of his books of this type is al-Lumā'.

<sup>9</sup> al-Tamhīd is an example of al-Bāqillānī's books of this type

<sup>10</sup> He is Abū Ḥāmid Muḥammad bin Muḥammad al-Ṭūsī (450 - 505 A.H / 1058 - 1111 C.E), a theologian, jurist, original thinker, mystic and religious reformer. (See EI(2), vol. 2, p. 1038). Among his polemic books of this type are Fadāih al-Bāṭiniyyah and al-Iqtisād fī al-I'tiqād.

uses other terms to denote the same person who holds the post of the leadership of the Muslims. The terms are "al-sultān"<sup>11</sup> and "al-wālī"<sup>12</sup> The following sentences are the best evidences to substantiate that the terms "al-imām", "al-sultān" and "al-wālī" are all meant for the holder of the post of the leadership of the Muslims:

- (i) "He (Imām Mālik) allows al-wālī to impose capital punishment as a ta'zīr (preventive) punishment."<sup>13</sup>
- (ii) "He (Imām Mālik) said: " al-imām has the right to kill one third of the ummah for the sake of giving benefit (istislāh) to the other two third of them."<sup>14</sup>
- (iii) "I (al-Juwaynī) do not hold the opinion that al-sultān has the right to exceed ḥadd (fixed) punishment."<sup>15</sup>

In the above three quotations, it is clear that al-Juwaynī uses the three terms "al-imām", "al-sultān" and "al-wālī" interchangeably as he uses these three terms within a discussion on the same subject.

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<sup>11</sup> See al-Ghiyāthī(1), p. 24, p. 182, p. 200, p. 202, p. 226, p. 228, p. 232, p. 238, pp. 387 - 391,

<sup>12</sup> See Ibid., p. 219, p. 238, p. 268, p. 269

<sup>13</sup> Ibid., p. 219

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., p. 226



The fact that the term "al-sultān" is to mean "al-imām" is supported by another al-Juwaynī's statement:

"al-sultān is the guardian (walī) for those who do not have a guardian"<sup>16</sup>

It is understood that al-sultān in this statement could also mean the imām of the Muslims.

The similarity of the meaning of "al-wālī" to "al-imām" is also supported by another al-Juwaynī's phrase:

"when the Muslims are governed (sāsa) by a wālī"<sup>17</sup>

Nevertheless, in some places in al-Juwaynī's writings, the term "sultān" could also have a more general meaning as the one who possesses power or authority in the Muslim Community. This may include an amīr, a leader of the Muslims in a restricted territory (during the absence of the imām) who is not considered by al-Juwaynī as having the same status as the imām, whose jurisdiction should cover all Islamic territories.<sup>18</sup> The confusion also happens to the term "al-wālī". As mentioned earlier, sometimes, al-Juwaynī uses "al-wālī" to denote the imām, but in some

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<sup>16</sup> Ibid., p. 232

<sup>17</sup> Ibid., p. 268

<sup>18</sup> Ibid., p.177



other places, the term clearly does not denote the imām. For example, when al-Juwaynī says:

"When there is a period in which the imām or a sultān who possesses power and capacity is absent, all the affairs [of the Muslims] should be entrusted to the scholars. Then, It is the duty of every individual to refer to their scholars and the scholars should conduct all the affairs which are related to government (qaḍāyā al-wilāyāt). If they do so, they have fulfilled the same duties. Therefore, they are considered as the "wulāh" of the people"<sup>19</sup>

In this quotation, the term "sultān" seems to have a different meaning from the imām. Otherwise, al-Juwaynī does not have to use two terms in a sentence with the imām with "alīf and lām" (al-imām) as an indication for definiteness or familiarity and the "sultān" without "alīf and lām" which indicates indefiniteness. As to the term "wulāh" (plural of wālī) in this quotation, it is definite that it does not denote the imām as according to al-Juwaynī, it is prohibited to have more than one imām at the same time, as will be discussed later. The possible meaning here is the persons who hold religious authority.

There is no indication in al-Juwaynī's writing that he uses the term "sultān" to mean the real title for any ruler. For Alp Arsalān, the second Saljūq ruler, al-Juwaynī calls him "malīk" (King) and "malīk al-Islām" (the king of

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<sup>19</sup> Ibid., p. 391

Islam).<sup>20</sup>

In some places, al-Juwaynī uses the same terms "a'immah" (plural of imām) and "wulāh" (plural of wālī) for different meanings. However, from the context of his writings, there is no confusion arises. The meanings required by al-Juwaynī are clear. For example, the term "a'immah" is used to mean scholars<sup>21</sup> and the term "wulāh" is used to mean governors<sup>22</sup>.

The term "Khulafā'" (plural of khalīfah) and "Khilāfah" are used by al-Juwaynī in a few places in his writings on the imāmate, but he does not use the terms to denote "al-imām" and "al-imāmah" as a concept. The terms are only used to denote the real title of a ruler which are used by the four Guided Caliphs, the Umayyad and the Abbasid.<sup>23</sup>

## 2. The Rule (Hukm) Regarding the Establishment of the Imāmate

Whenever possible, the establishment of the imāmate or

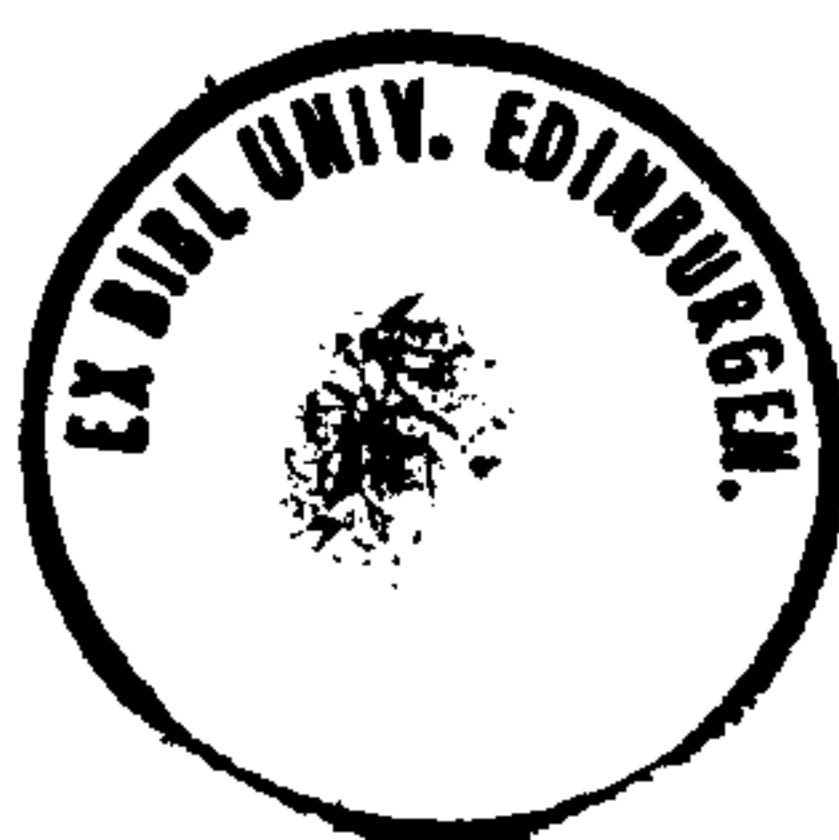
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<sup>20</sup> Ibid., p. 347, p. 348,

<sup>21</sup> Ibid., p. 326

<sup>22</sup> Ibid., p. 178, p. 253, p. 303

<sup>23</sup> Ibid., p. 99, p. 172, p.247, p. 251



the appointment of the imām is compulsory.<sup>24</sup> Al-Juwaynī supports his opinion by three bases. The first two, the ijmā' of all 'ulamā' and the tradition of the Companions during the appointment of the first caliph after the death of the Prophet Muḥammad may be regarded as based on religious law (shar') while the third is based on reason. What was done by the Companions is that they delayed the burial of the body of the Prophet and gave their concentration to the appointment of his successor. The reason for their concentration to the appointment was to avoid fighting between Muslims due to the absence of a leader. By rational basis, al-Juwaynī says that it is logical to say that defending the country is a necessity (maḥtūm). If people are left in chaos with different opinions and desires without a leader to unite them to the true way and to prohibit them from evil, it is certain that order will be disrupted, people will go astray, disputes will arise and evil people will conquer religious people.

Al-Juwaynī criticizes 'Abd al-Raḥmān bin Kaysān,<sup>25</sup> who holds the view that the appointment of the imām is not compulsory and that it is permissible to leave people with different opinions without any leader to unite them, by saying that 'Abd al-Raḥman bin Kaysān intends to create

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<sup>24</sup> al-Ghiyāthī(1), p. 22

<sup>25</sup> He is known as al-Aṣamm (See al-Ghiyāthī(1), p. 22)



chaos, promote disobedience and he is famous for his deviation from ijmā' and the traditions of the Muslims.

As to the basis for the obligation to appoint the imām, his writing indicates that he agrees with the majority of scholars that it is based on a transmitted provision (al-shar' al-manqūl).<sup>26</sup>

Al-Juwaynī rejects the opinion of a group of the Rāfiqites (al-Rawāfiq) who hold the view that the basis of the obligation is reason. According to this group, it is an obligation on God to give benefit (istislāh) to His servants ('ibād) and among the benefits which should be given is the appointment of the imām. In rebutting the above view, al-Juwaynī labels them as ignorant about the nature of God. Al-Juwaynī continues his argument saying that if God is burdened by obligations, He is subject to receiving rewards (mathāb) and punishment ('iqāb). This is clearly contradictory to the nature of God who neither benefits nor is harmed. Therefore, to believe that He has obligations is wrong.

Al-Juwaynī also argues that if prophets who are proven by miracles could be absent in certain periods of time, why could not the imām? Whereas prophets are more needed than

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<sup>26</sup> al-Ghiyāthī(1), p. 24



the imām to protect the religion of the ummah.

Another argument which is used by al-Juwaynī is that if reason is accepted as the basis, it is also possible for God to destroy the creatures (al-khalā'iq) and to make them in wrong path. However by His virtue and grace, good people enjoy His guidance and evil people suffer from His punishment. Certainly, God is not questioned about what He does but people are questioned by Him.

#### 4. The Methods of the Appointment of the Imām

Although al-Juwaynī does not compose a special chapter on the method of the appointment of the imām under a single topic, it can be concluded from the materials available in different places in his works that according to him, there are four ways to appoint the imām - the appointment by nass (designation), the appointment by ahl al-hall wa al-'aqd, the appointment by the existing imām (tawliyat al-'ahd) and self-appointment by usurpation. However, al-Juwaynī rejects the appointment by nass as a legitimate method and accuses those who hold the view of being deviationists.<sup>27</sup>

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<sup>27</sup> op. cit., p. 37

### 3.1. The Appointment by Nass

Before rejecting the appointment by nass, al-Juwaynī forwards four claims of the appointment by nass (assignment) by different group of Muslims:

(1) The Imāmites<sup>28</sup> of the Rāfidites<sup>29</sup> claim that the Prophet Muḥammad has appointed 'Alī as his successor or the imām for the Muslims after his death. However, later, the ummah hid the appointment from the people. They also claim that the appointment was witnessed by the people. Therefore, to them the appointment is certain (qat'ī) and there is no place for ijtihād in this matter.<sup>30</sup>

(ii) A group of the Zaydites<sup>31</sup> hold the view that there is no appointment of the imām by the Prophet Muḥammad but the ummah has chosen an unqualified person i.e. Abū Bakr. According to al-Zaydites, the only qualified person for the imāmate after the death of the Prophet Muḥammad is

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<sup>28</sup> The Imāmites is a branch of the Shi'ites who believe in twelve imāms beginning with 'Alī and ending with Muḥammad al-Mahdi. (See EI(2), III, pp. 1166 -1167 and pp. 277 - 279)

<sup>29</sup> The Rāfidites is a branch of the Shi'ites who reject the imāmate of Abū Bakr and 'Umar. (See EI(S), p. 466.

<sup>30</sup> See al-Ghiyāthī(1), pp. 28 -29, al-Irshād, p. 419. See also al-Ibānah, p. 72

<sup>31</sup> The Zaydites is a branch of the Shi'ites, distinguished from the Twelvers and Seveners by the recognition of Zayd bin 'Alī. (See EI(2), IV, pp. 1196 -1198)

‘Alī.<sup>32</sup>

(iii) A group who belongs to the Sunnites (al-Sunnah) claim that the Prophet Muḥammad has appointed Abū Bakr as the imām after him.<sup>33</sup>

(iv) A group known as the Abbāsids (al-‘Abbāsiyyah)<sup>34</sup> holds the view that the Prophet Muḥammad has appointed his uncle al-‘Abbās as his successor and to them there can be no doubt about the appointment.<sup>35</sup>

In refuting aṣhāb al-naṣṣ (those who claim that the establishment of the imāmate is based on the appointment by the Prophet Muḥammad), al-Juwaynī bases his argument on reason and the sunnah of the Prophet Muḥammad. Al-Juwaynī challenges them by questioning that how is it that only a certain group which is small in number able to know about the appointment without their adversaries who are the majority of the Muslims, and for those who claim that ‘Alī was appointed, how do they reject those who claim the appointment of Abū Bakr or al-‘Abbās? If they claim that the appointment is reported by a few individuals (aḥād), al-

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<sup>32</sup> See al-Ghiyāthī(1), pp. 29 - 30

<sup>33</sup> See Ibid., p. 30

<sup>34</sup> This group is probably the same group who is called by al-Ash‘arī as al-Rāwandiyyah (See al-Ibānah, p. 72)

<sup>35</sup> See op. cit., p. 30



Juwaynī says, their report is not free from mistake (zalal).<sup>36</sup> Therefore, their claim about the appointment is not acceptable. At another place in his work, al-Juwaynī states that the Imāmites (al-Imāmiyyah) rejects any tradition which is reported by a few individuals (khavar ahād) to be used as proof.<sup>37</sup> This is a clear contradiction within their own doctrine. Al-Juwaynī also reasons logically that if the appointment of wulāh (governors), su'āh (messengers) and jubāh (tax collectors) such as the appointment of Mu'ādh bin Jabal<sup>38</sup>, 'Attāb b. Asīd<sup>39</sup> and 'Alī as the fourth caliph can be known, how can the appointment of 'Alī by the Prophet Muḥammad as his successor not be known as well,<sup>40</sup> as this would have been much more important than the other matters. He also mentions the story of the conflict among the Muslims in Madīnah after the death of the Prophet Muḥammad. There was a discord between the Muslims on the appointment of the successor of the Prophet Muḥammad until Sa'd b. 'Ubādah was mentioned for the succession.<sup>41</sup> However, he was rejected by the people on

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<sup>36</sup> See Ibid., p.32

<sup>37</sup> See al-Irshād, p. 419 and p. 421

<sup>38</sup> Mu'ādh bin Jabal was appointed by the Prophet Muḥammad as a judge to Yemen. (See EI(2), vol. 5, p. 241)

<sup>39</sup> He is 'Attāb b. Asīd b. Abī al-'Āṣ, was appointed governor to Mecca (See EI(2), vol. 1, p. 75)

<sup>40</sup> See al-Ghiyāthī(1), p. 34

<sup>41</sup> See Ibid., p. 35



the grounds that he was not from Quraysh as this contradicts the sayings of the Prophet Muḥammad:

"Give preference to Quraysh and do not precede over them"<sup>42</sup>

and

"The imāms should be from Quraysh"<sup>43</sup>

After that the Muslims agreed to appoint Abū Bakr and all of them gave bai'ah (allegiance) to him. There was no one among the supporters of Sa'd b. 'Ubādah who opposed the appointment of Abū Bakr.<sup>44</sup> Al-Juwaynī also says that if there had been such an appointment for 'Alī by the Prophet Muḥammad, when Abū Bakr was appointed, surely someone among the people would have said:

"What happened to you, confused in the darkness, entangled in trouble, hesitating in rejecting and nominating, separating and uniting and you ignore the nass by the Sāhib al-shar' (the law maker)?"<sup>45</sup>

In another argument, when rejecting the appointment by

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<sup>42</sup> al-Ṭabrānī (See al-Irshād, p. 427)

<sup>43</sup> Aḥmad, al-Ṭabrānī (al-Ghiyāthī(2), p. 36)

<sup>44</sup> See al-Ghiyāthī(1), pp. 35 - 36

<sup>45</sup> Ibid. p. 36

nass, al-Juwaynī also questions how the Companions of the Prophet Muḥammad, who are pious, leaders of the people, never being under any subjugation of anyone except God and were present at the time of the Prophet Muḥammad could not understand the clear nass by their genius.<sup>46</sup> These are clear proofs that the concealing of the appointment is impossible.

Against those who base their argument on the following hadīths:

"One whose mawlā is myself, 'Alī is his mawlā"<sup>47</sup>

and

"You are to me like the position of Hārūn to Mūsā",<sup>48</sup>

al-Juwaynī proves clearly that these two hadīths cannot be accepted as proof in saying that 'Alī is the one who should succeed the Prophet Muḥammad.

As to the first hadīth, first, he rejects it because

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<sup>46</sup> See Ibid., pp. 42 - 43 .

<sup>47</sup> al-Ṭabrānī, Aḥmad, al-Nasā'ī, al-Tarmidhī, Ibn mājah (See al-Irshād, p. 421, al-Ghiyāthī(1), p. 29, al-Ghiyāthī(2), p. 20)

<sup>48</sup> Bukhārī, Ibn Mājah (See al-Irshād, p. 422, al-Ghiyāthī(2), p. 20)

the hadith is āhād<sup>49</sup> and therefore, is open to mistake. Due to this possibility, the appointment cannot be certain. Second, the word mawlā is a word which has more than one meaning (lafz mushtarakah). The word may mean a cousin, a slave liberator, a liberated slave or a helper.<sup>50</sup>

As to the second hadīth, al-Juwaynī says that it is absolutely unacceptable if the "position" in the hadīth is to mean succession of authority because Hārūn died before Mūsā<sup>51</sup> and therefore, he never succeeded Mūsā. In fact, the similarity between the two cases is that Hārūn was a helper to Mūsā during Mūsā's life time and 'Alī was the Prophet Muḥammad's assistant in replacing him in Madīnah during the Battle of Tābūk while the Prophet Muḥammad was still alive.<sup>52</sup> However, in view of al-Juwaynī's interpretation of the second hadīth, it would seem likely that the word mawlā in the first hadīth to mean for helper.

### 3.2. The appointment by ahl al-hall wa al-'aqd.

At the time when there is no imām existing in power,

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<sup>49</sup> See Ibid. p. 38

<sup>50</sup> See Ibid., p. 39, al-Irshād, p. 422

<sup>51</sup> See al-Ghiyāthī(1), p. 40, al-Irshād, p. 422

<sup>52</sup> See al-Ghiyāthī(1), pp. 40 - 41, al-Irshād, p. 422

the normal way to appoint the imām is by the choice of ahl al-hall wa al-°aqd. On this method of appointment, al-Juwaynī states:

"the choice (al-ikhtiyār) by ahl al-hall wa al-°aqd is the basis which should be believed (al-mustanad al-mu°taqad) and the reference which should be relied on (al-mu°awwal al-mu°taqad)"<sup>53</sup>

The appointment of Abū Bakr, the first caliph after the death of the Prophet Muḥammad is the strongest evidence for the appointment by ahl al-hall wa al-°aqd. The appointment is established by the ijmā° of the Companions.<sup>54</sup> According to al-Juwaynī,

"ijmā° (consensus) is a definite proof (ḥujjah qāti°ah)".<sup>55</sup>

In other separate statements, he says:

"It has been set up that ijmā° is a definite and manifest proof (dalīl qat°i wa burhān sāti°) in the shar°".<sup>56</sup>

"The definite legal proofs are three: text from the book of God which is not open to ta'wīl (argument)

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<sup>53</sup> Al-Ghiyāthī(1), p. 43, al-Irshād, p. 423

<sup>54</sup> al-Ghiyāthī(1), p. 55, al-Irshād, p. 430, Lam° al-Adillah, p. 115.

<sup>55</sup> al-Burhān, p. 436, See. also al-Waraqāt, p. 24

<sup>56</sup> Ibid., p. 438



about its validity, khavar mutawātir (continuously transmitted tradition) from the Messenger in which mistake in report and transmission is impossible and ijmā' which has been established."<sup>57</sup>

and

"We never found any definite basis (ta'wīl) for the the issues regarding the imāmate except ijmā'".<sup>58</sup>

Al-Juwaynī also supports the appointment of Abū Bakr by the following traditions of the Prophet Muḥammad:<sup>59</sup>

- (i) "It is not proper for a qawm (a group of people) in which there is Abū Bakr, to give priority over him to anyone else"<sup>60</sup>
- (ii) "God and Muslims refuse anyone except Abū Bakr"<sup>61</sup>
- (iii) "Follow the two after me - Abū Bakr and 'Umar"<sup>62</sup>
- (iv) The Prophet Muḥammad asked Abū Bakr to replace him as the imām of prayer when the Prophet

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<sup>57</sup> al-Ghiyāthī(1), pp. 60 - 61

<sup>58</sup> Ibid., p. 54

<sup>59</sup> See al-Ghiyāthī(1), pp. 41 - 42, In al-Irshād, p.423, al-Juwaynī mentions only two of the traditions i.e:

(i) "God and Muslims refuse anybody except Abū Bakr"

(ii) "Follow the two after me - Abū Bakr and 'Umar"

<sup>60</sup> al-Tirmidhī (al-Ghiyāthī(1), p. 41), al-Ghiyāthī(2), p.32)

<sup>61</sup> Muslim (al-Irshād, p. 423, al-Ghiyāthī(1), p. 42)

<sup>62</sup> Aḥmad, Tirmidhī, Ibn Mājah (Irshād, p. 423)

Muhammad was in sickness which led him to his death.<sup>63</sup>

### 3.2.1. The qualification of ahl al-hall wa al-'aqd

As to the definition of ahl al-hall wa al-'aqd, al-Juwaynī reserves a chapter in al-Ghiyāthī to discuss the qualification of ahl al-hall wa al-'aqd and their valid number for the contract of the imamate.

Before discussing the required qualification of ahl al-hall wa al-'aqd, al-Juwaynī mentions the groups which are not qualified to be a member of ahl al-hall wa al-'aqd. Those groups are woman, slave even though he may be a very knowledgeable person, ordinary person who does not reach the status of an 'ālim (singular of 'ulamā') and ahl al-dhimmah (non-Muslims within the Islamic State).<sup>64</sup> Al-Juwaynī continues by saying that the exclusion of these groups from the qualification of ahl al-hall wa al-'aqd is definite (qat'ī) and well-known (laysa bih khifā').

From the exclusion, it can be understood that the person qualified to be a member of ahl al-hall wa al-'aqd should be male, free status, knowledgeable ('ālim) and Muslim. Beside these qualifications, al-Juwaynī adds two

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<sup>63</sup> See al-Ṭabarī, Tārīkh al-Ṭabarī, vol. 3, pp. 196 - 197

<sup>64</sup> See al-Ghiyāthī(1), pp. 62 - 63

other requirements - possession of power and peity (wara').

### 3.2.1.1 Male

A member of ahl al-hall wa al-'aqd must be male. From his writing, it can be understood that, according to al-Juwaynī, there are five reasons why a woman is not qualified to be a member of ahl al-hall wa al-'aqd.

The first reason is based on ijmā' of 'ulamā' that women have not ever been referred to or consulted in the past regarding the election and appointment of the imām. If they should be consulted, the most appropriate and qualified women to be consulted are Fāṭimah, the daughter of the Prophet Muḥammad and his wives. However, that has never happened.<sup>65</sup>

The second reason is based on his opinion that women are not created for managing other's affairs. The grounds for his opinion is that even the management of women's affairs is delegated to men.<sup>66</sup>

The third reason is that women are not suitable for the duty because they should not expose themselves to the

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<sup>65</sup> al-Ghiyāthī(1), p. 62

<sup>66</sup> Ibid., p. 64

public like men do. The duty to elect and appoint the imām would require women to expose themselves in public.<sup>67</sup>

The fourth reason is that women have little capability in the matter related to decision-making and reasoning.<sup>68</sup>

The fifth reason is that women are not independent. Al-Juwaynī supports his opinion by saying that if a woman is not independent in giving herself in marriage, how could she be allowed to be independent in making decision in a greater and more important matter?

#### 3.2.1.2. Free Status

A member of ahl al-hall wa al-'aqd must be a person who possesses free status. A slave, even though he may be a very knowledgable person, is not qualified to be a member of ahl al-hall wa al-'aqd because a slave is not independent as he is under the control of his master. Therefore, a slave is not free to investigate and ascertain the qualities of the person to be appointed as the imām.<sup>69</sup> Regarding the slave, al-Juwaynī states:

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<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.



"...it is as if they do not have any way of expressing their will"<sup>70</sup>

### 3.2.1.3. Knowledge

A member of ahl al-hall wa al-'aqd must be a knowledgable or learned person (fāḍil). An ordinary person who does not reach the status of an 'ālim is not qualified to be a member of ahl al-hall wa al-'aqd.

The reason for excluding an ordinary person is that if the person does not have knowledge about the qualities required for the imām, he may choose the wrong person for the post of the imāmate and this would cause harm to the Muslims.

However, al-Juwaynī does not require that the knowledgable or learned person must reach the status of a mujtahid.<sup>71</sup> It is sufficient that the person knows about the relevant knowledge which is necessary (tamussu al-hājah) for the duty, for instance, an evaluator (muqawwim) should know about the prices and the nature of the goods, a distributor (qassām) should know about calculation (hisāb and masāḥah) and the method of settling shares, a date collector (Khāriṣ) should know about whatever necessary for

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<sup>70</sup> Ibid.

<sup>71</sup> Ibid., p. 72

his duty and the hakamayn ( two arbitrators) for reconciling spouses in marriage conflict should know about the rights and responsibilities of marriage, the custom of living together and their details. They are not required to be mujtahid.<sup>72</sup>

#### 3.2.1.4. Age of Majority

An member of ahl al-hall wa al-'aqd must be a person who has reached the age of majority (dhawī al-ahlām).<sup>73</sup>

#### 3.2.1.5. Islam

A member of ahl al-hall wa al-'aqd must be a Muslim. This is understood from his exclusion of ahl al-dhimmah as he says:

"there is no place for ahl al-dhimmah in the appointment of the imām".<sup>74</sup>

However, al-Juwaynī does not give any reason for the exclusion of this group. Probably, al-Juwaynī purposely ignores the reason from being discussed as it could be understood by common sense that non-Muslims may act against

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<sup>72</sup> Ibid., pp. 64 - 65

<sup>73</sup> Ibid., p. 62

<sup>74</sup> Ibid.

the religion of Islam if they become ahl al-hall wa al-'aqd.

### 3.2.1.6. Possession of Power

A member of ahl al-hall wa al-'aqd must be a person who possesses power and able to provide strength and power (shawkah) with his followers for the imām, by which any opposition or rebellion can be deterred.<sup>75</sup> If the person is weak and is not able to provide strength and power which can deter opposition, he is not qualified to be a member of ahl- al-hall wa al-'aqd.

Al-Juwaynī provides two grounds for the requirement of this quality.

The first ground is the case of the bai'ah which is given by 'Umar to Abū Bakr when the latter was appointed as the first caliph. Although Abū Bakr was given bai'ah at the beginning only by 'Umar, he had a number of supporters with him which gave Abū Bakr power and stability. There was no one who opposed the appointment of Abū Bakr.<sup>76</sup>

The second ground is the ijmā' of all 'ulamā' on the principle that if only one member of ahl al-hall wa al-'aqd

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<sup>75</sup> Ibid., pp. 70 -71

<sup>76</sup> Ibid.

and the imām-to-be make the contract of the imāmate, the contract is not valid." What al-Juwaynī means by the "only one member" is a person who is alone without any supporters to provide power to the imām.

On this principle, al-Juwaynī says:

"Power should be required (lā budda min ri'āyatihā)"<sup>78</sup>

and

"...I require that the one who gives bai'ah (allegiance) must be from one whose mubāya'ah (allegiance) is able to provide (yufid) strength (munnah) and power (iqtihār)".<sup>79</sup>

#### 3.2.1.7. Piety (Wara')

A member of ahl al-hall wa al-'aqd must have the quality of piety (wara').<sup>80</sup> The purpose of the requirement of this quality is that the person must be trustworthy as he says:

"One who can not be trusted with a bundle of sprouts, how can he be trusted to choose the imām?"<sup>81</sup>

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<sup>77</sup> Ibid., p. 71

<sup>78</sup> Ibid., p. 71

<sup>79</sup> Ibid., p. 72

<sup>80</sup> al-Ghiyāthī(1), p. 66

<sup>81</sup> Ibid.



and

"One who does not fear God is not free from his calamities (qhawā'iluh) and one who does not protect his chastity, his virtue is useless".<sup>82</sup>

Also, on this quality, al-Juwaynī remarks that the requirement of this quality for a member of ahl al-hall wa al-'aqq is more important than the saying that the imāmate is established by nass (designation).<sup>83</sup>

### 3.2.2. The Number of Ahl al-Hall wa al-'Aqq

Before giving his opinion on the number of ahl al-hall wa al-'aqq, al-Juwaynī precedes with four opinions of different groups of scholars and their basis on this regard.

The first opinion is two persons. The basis for this opinion is that two is the least number for plural.<sup>84</sup> The second opinion is four persons. The basis for this opinion is that the imāmate is the most important matter, therefore, the number of witnesses of four should be taken into consideration.<sup>85</sup> The third opinion is forty persons.

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<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid., p. 68

<sup>85</sup> Ibid.

The basis for this opinion is that the imām of the Muslims is considered similar to the imām in a jum'ah prayer.<sup>86</sup> The fourth opinion is one person. This opinion, as al-Juwaynī says, belongs to al-Qāḍī Abū Bakr (al-Bāqillānī)<sup>87</sup> who transmits it from Abū Ḥasan (al-Ash'arī)<sup>88</sup>

However al-Juwaynī rejects all the first three opinions saying that the method of reasoning used by those groups is the weakest method of analogy in the shara' and all these opinions are not based on any evidence (asl) from the source (ma'khadh) of the imāmate.<sup>89</sup> Al-Juwaynī agrees with the fourth opinion and its reasons. The reasons for the fourth opinion is that unanimity (ijmā) is not a condition for the validity of the contract of the imāmate, there is no revealed provision (tawqīf) proven requiring certain number of members and contracts in the shara' can be contracted by one person.<sup>90</sup>

Al-Juwaynī, however, differs from al-Bāqillānī and al-Ash'arī as he does not consider that the requirement of one

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<sup>86</sup> Ibid., pp. 68 - 69

<sup>87</sup> See al-Tamhīd, p. 178

<sup>88</sup> This opinion of al-Ash'arī is mentioned by al-Baghdādī (Abū Manṣūr 'Abd al-Qāhir b. Ṭāhir al-Tamīmī, d. 429 A.H/1027 C.E, See EI(2), vol. 1, p. 909) in his book Uṣūl al-Dīn, p. 46. This may be taken from al-Ash'arī's Maqālāt, p. 149

<sup>89</sup> Ibid., p. 68

<sup>90</sup> Ibid., p. 69

person as absolute. According to al-Juwaynī, the contract by one person can be valid only if the person with his supporters is able to provide power to the imām by which any opposition or rebellion against the imām can be deterred. If the bai'ah is given by a single person who is weak and unable to deter opposition or rebellion against the imām, the bai'ah is not valid.<sup>91</sup>

Regarding this requirement, al-Juwaynī says:

"It is not the number (ʿadad) which counts but the equipment (ʿudad) i.e. the power which he wields".<sup>92</sup>

After agreeing with the opinion that unanimity is not a condition for the validity of the contract of the imāmate,<sup>93</sup> al-Juwaynī strengthens the opinion with two arguments.

The first argument is based on an ijmāʿ<sup>94</sup> that the appointment of Abū Bakr was valid although not all people had given bai'ah to him when he was appointed as a caliph. The proof is that he did not wait until the news of his appointment had spread throughout the country and until

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<sup>91</sup> al-Ghiyāthī(1), p. 60

<sup>92</sup> Ibid. ,p. 69

<sup>93</sup> al-Ghiyāthī(1), p. 67, al-Irshād, p. 424

<sup>94</sup> al-Ghiyāthī(1), p. 70



every body outside Madīnah (balad al-hijrah) had given bai'ah to him, to exercise his duty to judge, to prepare armies, to appoint generals, to dispatch soldiers to those who refuse to pay zakāt and to collect taxes and divide them. It is so practised by other Guided Caliphs.”

The second argument is based on reason. Al-Juwaynī says that the purpose of the appointment of the imām is to protect the country and to take care of the important matters of Islām. Some of the matters involving danger cannot be delayed; otherwise, they would cause disorder. Therefore, it is impossible to obtain unanimity in the contract of the imāmate.<sup>95</sup>

To al-Juwaynī, this principle is definite (maqtū' bih):

### 3.3. The Appointment by A Predecessor: Tawliyat al-'Ahd

The second method of appointing the imām is the appointment by the existing imām or tawliyat al-'ahd.

#### 3.3.1. Evidence

To support the legitimacy of this method, al-Juwaynī

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<sup>95</sup> al-Ghiyāthī(1), p. 67

<sup>96</sup> Ibid., pp. 67 - 68



bases his opinion on two grounds.

The first ground is the ijmā' of the bearers of the sharī'ah (hamalat al-sharī'ah).<sup>97</sup> When Abū Bakr appointed 'Umar to succeed him after his death, there was no one who opposed the appointment.<sup>98</sup> All 'ulamā' agree that tawliyat al-'ahd is a legitimate method to appoint an imām and it is the right of the existing imām to appoint his predecessor. According to al-Juwaynī, this rule is definite. However, al-Juwaynī refuses to accept the method of the appointment which was practised by the Umayyad and the 'Abbāsīd caliphs as a legal evidence for this rule.<sup>99</sup>

The second ground is rational. Al-Juwaynī says that if any single person who is able to provide power to the imām is permitted to make the contract of the imāmate, it is more appropriate that the existing imām who has been the head and example of the people, and experienced in ruling them and handling their affairs, should be executed.<sup>100</sup> This principle is also definite (qat'an).

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<sup>97</sup> Ibid., p. 134 and p. 135

<sup>98</sup> Ibid.

<sup>99</sup> See al-Ghiyāthī(1), p. 139

<sup>100</sup> Ibid., pp. 135 - 136

### 3.3.2. Requirement for a Walī al-ʿAhd

It is required that a walī al-ʿahd must possess all the qualities required for the imām. The reason for that is that the walī al-ʿahd will be de facto imām after the death of the appointing imām (muwallī).<sup>101</sup> This principle is definite.<sup>102</sup>

### 3.3.3. The Acceptance of the Appointment by the Walī al-ʿAhd

For an appointment of a walī al-ʿahd to be valid, it must be accepted by the walī al-ʿahd. The reason is that although a walī al-ʿahd is considered as a deputy (mustanāb) to the appointing imām, the appointment (tawliyah) from the appointing imām is a contract of the imāmate.<sup>103</sup> Therefore, the contract is not valid until it is accepted by the appointee (al-muʿayyan).<sup>104</sup> The difference between the imām who is appointed by ahl al-hall wa al-ʿaql and the walī al-ʿahd is that the walī al-ʿahd does not have the authority as an imām before the death of his predecessor.<sup>105</sup> This

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<sup>101</sup> Ibid., p. 136

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

principle is definite.<sup>106</sup>

#### 3.3.4. The Time of the Commencement of the Acceptance of the Appointment by Walī al-ʿAhd

Before giving his opinion, regarding the time of the commencement of the acceptance of the appointment by walī al-ʿahd, al-Juwaynī presents two different opinions of ʿulamāʾ.

The first opinion is that the time of the acceptance begins at the time of the death of the appointer (al-muwallī). This opinion is based on the rule that the time of the execution of a will (waṣiyyah) which begins at the death of the person who makes the will (al-mūṣī). Therefore, the walī al-ʿahd does not have the authority of the imāmate and is not independent with the governmental jurisdiction as long as the appointing imām is still alive.<sup>107</sup>

The second opinion is that the time of acceptance begins during the life time of the appointing imām (al-ʿāhid). The reason for this opinion is that the appointment (tawliyat al-ʿahd) is among the great matters. When the imām

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<sup>106</sup> Ibid.

<sup>107</sup> Ibid., p. 142

appoints a walī al-‘ahd, he appoints one who possesses the qualities for the imām for the interest of the Muslims and to seek strength for the religion and safety in preparing a successor. This purpose cannot be obtained except by making the validity of the appointment during the life time of the appointer and then the contract of the imāmate begins at the time of the death of the latter.<sup>108</sup>

Between the two opinions, it is understood that al-Juwaynī favours the second one.<sup>109</sup> However, to him, this principle is not definite.<sup>110</sup>

### 3.3.5. The consent of Ahl al-Ikhtiyār<sup>111</sup> to the Appointment of Walī al-‘Ahd

The consent of the ahl al-ikhtiyār or ahl al-hall wa al-‘aqd is not required for the appointment of a walī al-‘ahd to be valid.<sup>112</sup> His reason is that he claims that when Abū Bakr appointed ‘Umar as his walī al-‘ahd, Abū Bakr did not consult any one of ahl al-hall wa al-‘aqd in spite of the presence of the Emigrants (Muhājirīn) and Helpers

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<sup>108</sup> Ibid., pp. 142 - 143

<sup>109</sup> Ibid., p. 144

<sup>110</sup> Ibid., p. 142

<sup>111</sup> Ahl al-ikhtiyār meant here is ahl al-hall wa al-‘aqd.

<sup>112</sup> Ibid., p. 139



(Anṣār).<sup>113</sup> It is reported that Ṭalḥah said to Abū Bakr:

"You have appointed a crude person as the successor for us"

then, Abū Bakr said:

"They appointed me (aḥlasūnī), and now, he, God bless him, is appointed"

and he continued saying:

"If God asked me about the delegation (tafwīd) of the Muslims' affairs to 'Umar, I would say that I have appointed a successor, for your people, the best of them"<sup>114</sup>

To al-Juwaynī, this principle is definite.<sup>115</sup>

### 3.3.6. The Appointment of a son by a father

Regarding the appointment of a son by a father who is the existing imām as his walī al-ʿahd, al-Juwaynī precedes with two different opinions of Muslim scholars.

The first opinion is that a father does not have the

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid., p. 140

<sup>115</sup> Ibid., p. 139

right to appoint his son as his successor. The reason is that the appointment by a father involves the attestation (tazkiyah) of the appointer on whether the appointee possesses all the qualities for the imāmate. Those who hold this view say that if a father's testimony for his child and vice-versa is not accepted even in a small matter, as far as the Shari'ah is concerned, it is more appropriate (awlā) that a father's testimony for his son on the highest post should not be accepted.<sup>116</sup>

The second opinion is that a father has the right to appoint his son as his successor. The reason is that the required qualities for the imām are well-known. The contract of the imāmate should not be made except for one who possesses the required qualities. The possession of the best qualities by a person does not require any attestation by a witness. Therefore, If a son possesses integrity (ʿadālah) and his integrity is witnessed by his father, the witness is accepted because the integrity of the the person witnessed (al-aṣl) does not depend on the testimony of the the person who witnesses (al-farʿ). Also, those who hold this view say that if a Muslim father converts his unbeliever son to Islām, his conversion is accepted because the contract of the conversion does not depend on the father's investigation about the details of the qualities

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<sup>116</sup> Ibid., p. 137

of his son.<sup>117</sup>

Between these two opinions, al-Juwaynī agrees with the opinion that a father has the right to appoint his son as a walī al-‘ahd. However, he says, his opinion is not definite due to the lack of any definite evidence (mustanad maqtū‘).<sup>118</sup>

### 3.3.7. Conditional Appointment of a Walī al-‘Ahd

If a walī al-‘ahd is appointed from a person who does not possess the required qualities for the imāmate, but his appointment is conditional on the fulfilment of the qualities, the appointment is void.<sup>119</sup> The reason is that, first, the appointing imām has chosen an unqualified person. Second, the purpose of the appointment (‘ahd) is to create supervision (nazar) and capacity (kifāyah) as the deterrence to the danger which may appear at the time of the death of the appointing imām). The appointment of the above-mentioned person is clearly contradictory to this purpose. However, this principle, according to al-Juwaynī is not definite (laisa dhālik maqtū‘ bih) due to the lack of

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<sup>117</sup> Ibid., pp. 137 - 138

<sup>118</sup> Ibid., pp. 138 - 139

<sup>119</sup> Ibid.



definite evidences (qawāti<sup>c</sup>).<sup>120</sup>

If one who is qualified for the imāmate says:

"If the caliphate ended at me, I would appoint so and so as my walī al-‘ahd",

and later he becomes the caliph. The appointment of his walī al-‘ahd before he becomes the caliph is void. This principle is agreed upon (muttafaq) and definite. The reason is that when the caliph made his appointment, he did not have jurisdiction to do so.<sup>121</sup>

If the existing imām makes a condition that his successor should be among a limited number of people who possess the required qualities for the imāmate and should be chosen by shūrā (consultation) among themselves, the condition must be executed. This principle is definite based on the condition imposed by ‘Umar that his successor should be appointed by shūrā among the well-known six persons whom he himself chose. If the existing imām specifies a specific person among those chosen to make the appointment, the specification should be executed. If there is no one specified to make the appointment, ahl al-hall wa al-‘aqd is the one who should make the appointment and the

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<sup>120</sup> Ibid.

<sup>121</sup> Ibid.



best among the nominated should be appointed as the imām.<sup>122</sup>

If the existing imām set up his appointment of some of those who are qualified for the imāmate to be his awliyā' ʿuhūd (plural of walī al-ʿahd), in order, during his life time, his appointment should be executed. This is agreed upon by the scholars (aʿimmah) without exception. The evidence for this principle is that the appointment of the commanders (umarā') of the army in the Battle of Mu'tah by the Prophet Muḥammad as he says:

"The holder of the flag (ṣāhib al-rāyah) is Zayd b. Ḥārithah. If he is killed (uṣiba), then, Jaʿfar b. Abī Ṭālib, if he is killed, then ʿAbdullah ibn Rawāḥah, if he is also killed, then the Muslims should appoint a man among themselves"<sup>123</sup>

In the case, if the existing imām sets up his appointment of his successors (awliyā' ʿuhūd) for the period after his death, al-Juwaynī presents two opinions of scholars before presenting his own.

The first opinion is that only the appointment of the first walī al-ʿahd should be executed. Then, it depends on that first walī al-ʿahd when he becomes the imām to appoint

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<sup>122</sup> Ibid., p. 145

<sup>123</sup> Ibid., pp. 145 - 146

his son walī al-‘ahd to succeed him. The reason is that the appointment of the commanders of army in the Battle of Mu'tah was during the life time of the Prophet Muḥammad.

The second opinion is that the arrangement by the appointer should be executed.

Between these two opinions, al-Juwaynī chooses the first opinion. He says that the appointment (‘ahd) of the first appointed walī al-‘ahd when he becomes the imām, should prevail over the appointment of his predecessor. Al-Juwaynī continues that when the first walī al-‘ahd becomes the imām, he is independent with the duties of the imāmate. Therefore, his right to appoint his own walī al-‘ahd should prevail over the appointment by his predecessor.<sup>124</sup>

#### 3.4. The Appointment by Usurpation

Another legitimate method of the appointment of the imām is by usurpation i.e. the imām comes to power by himself without being appointed by ahl-al-ḥall wa al-‘aqd or the existing imām and asks the people to give bai‘ah to him. It is understood that this method can be applied when there is no legitimate imām in power.

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<sup>124</sup> Ibid., p. 147

Regarding the appointment of the imām through this method, al-Juwaynī discusses their rules according to different types of usurper.

#### 3.4.1. Usurpation by One Who Possesses Full

##### Qualification for the Imāmate

If the usurpation is by one who possesses full qualification for the imāmate with power (quwwah) and he is the best among the qualified people available, he is considered as the legitimate imām whether or not his self-appointment is approved by ahl al-hall wa al-‘aqd. At a time when no people possess qualifications as ahl al-hall wa al-‘aqd, he himself functions both as the contractor (al-‘āqid) and one for whom the contract is made (al-ma‘qūd ‘alayh). The reason for its legitimacy is due to the clear need by the Muslims for an imām. It is not permissible to leave Muslims at any period without a leader (wālī) to protect the Islamic territory (baldah al-Islam). This principle is definite.<sup>125</sup>

If there are people qualified as ahl al-hall wa al-‘aqd, but they refuse to approve his appointment, their refusal is considered as in similar position to their

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<sup>125</sup> Ibid., p. 317



absence because if their refusal is without permissible excuse, they become unqualified to be ahl al-hall wa al-'aqd. The reason for this is that delaying the public matter (al-amr al-kullī) in protecting the land of Islām is considered as a continuation of sin which constitutes fisq. In this case, the usurper should call the people to obey him. His call must be responded to and people should obey him.<sup>126</sup>

If ahl al-hall wa al-'aqd do not refuse, the researchers (al-khā'idūn) differ. One opinion says that the usurper must obtain the contract from ahl al-hall wa 'aqd due to its possibility and the fact that the contract ('aqd) is the cause (sabab) of the establishment of the imāmate.<sup>127</sup>

However, according to al-Juwaynī, in the case of usurpation, the contract from ahl al-hall wa al-'aqd is not required. The reason for this rule is that the purpose of the contract by ahl al-hall wa al-'aqd is to avoid conflict if there are many qualified persons. If there is only one such person, the contract by ahl al-hall wa al-'aqd is meaningless because even if ahl al-hall wa al-'aqd refuse to

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<sup>126</sup> Ibid., p. 318

<sup>127</sup> Ibid., p. 319



make the contract, the imāmate still continues.<sup>128</sup>

If the usurper does not possess equipment and power, and there is no ahl al-hall wa al-'aqd, people should support him and appoint him as the imām. If they refuse and do not obey him, they are sinful due to the necessity of having the imām to conduct the religion and worldly affairs. If they or some of them obey and make him a strong imām against the hypocrites (munāfiqīn) and deviationists (al-māriqīn), his imāmate is legitimate.<sup>129</sup> If he is not obeyed or obeyed by weak people who are unable to provide power; in this case, al-Juwaynī is quite hesitant between two possibilities (iḥtimālāt) of opinion.

The first possibility is to say that his imāmate is not legitimate on the grounds that the usurper is not contracted by ahl al-hall wa al-'aqd and that the obedience does not constitute a means ('uddah) which is able to replace ikhtiyār (choice by ahl al-hall wa al-'aqd).<sup>130</sup> The absence of obedience to the imām is in similar position to imprisonment in war from which his release is hopeless.<sup>131</sup> In this case, all Muslims would be sinful due to the lack

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<sup>128</sup> Ibid., pp. 319 - 320

<sup>129</sup> Ibid., p. 321

<sup>130</sup> Ibid., p. 322

<sup>131</sup> Ibid.

of support to the only one who is qualified for the imāmate and their abstention from appointing the imām to solve conflicts and dissension, to conduct affairs and to organize wars and fortresses.<sup>132</sup>

The second possibility is to say that his imāmate is legitimate and therefore, all his commands (ahkām) which are in conformity with shar' should be executed. The reason is that such an abstention by people from obedience is not considered as nullifying the imāmate as there is no other person to whom the people are inclined to be appointed as the imām.<sup>133</sup>

Between these two possibilities of opinion, al-Juwaynī is more inclined to the second possibility although he does not reject totally the first possibility as he says:

"the first (possibility) is also not improbable (ba'id) because the foundation (qā'idah) of the imāmate is obtaining help (istizhār) with strength (munnah) and increasing (istikthār) with equipment and power"<sup>134</sup>

It is also among the principles of the imāmate, that it is obligatory on the only one (tafarrada) qualified for the imāmate to strive to be the imām and call people to

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<sup>132</sup> Ibid.

<sup>133</sup> Ibid., pp. 323 - 324

<sup>134</sup> Ibid., p. 323

obey him. If there are people who are willing to obey him but he chooses to abstain (al-taqā'ud) from the duty and isolate himself (istikhlā') to worship God, while he knows that no other person is able to replace him, according to al-Juwaynī, that person has committed the greatest sin (akbar al-kabā'ir wa a'zam al-jarā'ir). In such a case where he is the only one who is qualified for the imāmate, the obligation is a personal one (fard 'ayn). If there are other persons who are also qualified for the imāmate, the obligation becomes a public one (fard kifāyah) on him, i.e. he or another person qualified must accept the imāmate.<sup>135</sup>

It is also agreed upon by the 'ulamā' that when that qualified person refuses to strive to be the imām, he becomes unqualified for the imāmate on the grounds that he has committed sin.

If there are many persons who are qualified and one of them usurps with power ('uddah) and is approved by ahl al-hall wa al-'aqd, his imāmate is legitimate. If ahl al-hall wa al-'aqd are negligent by delaying the appointment of one of them as the imām and the situation leads to the accumulation of the causes of corruption (dawā'ī al-khalal); his usurpation does not lead to fisq, transgression ('usyān) or deviation (al-murūq); and rejecting him and appointing

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<sup>135</sup> Ibid., pp. 323 - 324



another will lead to dissension and a situation which ought to be guarded against, people should give the bai'ah to him. However, the appointment of the usurper in such a case as this, according to al-Juwaynī, cannot be legitimate without the approval from ahl al-hall wa al-'aqd because he is not the only one who is qualified for the imāmate. Hence, it is the duty of ahl al-hall wa al-'aqd to appoint him to avoid any dissension (fitan). He supports his opinion with the bai'ah by al-Ḥasan and al-Ḥusayn to Mu'āwiyah.<sup>136</sup> On this principle, al-Juwaynī says:

"the validity of the imāmate without tawliyat al-'ahd, the bai'ah from ahl al-hall wa al-'aqd or entitlement (istiḥqāq) by the only qualified person (al-tawāḥḥud wa al-tafarrud) is improbable (ba'id)".<sup>137</sup>

Al-Juwaynī rejects the opinion of the scholars, whom he describes as "our scholars" (a'immatinā), that if the one who usurps power continues in power and it is difficult to remove him, his continuation in power is considered as the fulfilment of the requirements (ḥuqūq) for the imāmate, hence, his imāmate should be approved. They had argued that in such a case, ikhtiyār becomes meaningless as ikhtiyār is required if there is competition between two or more equal persons. Usurpation (istizhār) which is unchallengable

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<sup>136</sup> Ibid., pp. 325 - 326

<sup>137</sup> Ibid., p. 325



constitutes, for them, the validity of the imāmate.<sup>138</sup>

#### 3.4.2. Usurpation by One Who Does Not Possess Full Qualification for the Imāmate but Possesses Capacity

At a time when there is no one qualified for the imāmate, if there is only one person who possesses capacity (kāfī), whose bravery and determination are unchallengeable and he usurps power, he should be appointed as the imām. The details on the conditions (except regarding qualities) and procedures of his appointment are completely similar to that of the one who is qualified for the imāmate by usurpation as above-mentioned.<sup>139</sup>

#### 3.4.3. Usurpation by a Fāsiq (Sinful Person)

Among the principles of the imāmate is that the appointment of a fāsiq as the imām is not permissible even though his rise to power (thawratih) is initially due to a certain need (hājah) and afterwards the need disappears, with him still holding power. If he asks ahl al-hall wa al-'aqq to give bai'ah to him, the bai'ah should not be

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<sup>138</sup> Ibid., p. 326

<sup>139</sup> Ibid., p. 329

given.<sup>140</sup>

If his rising is initially due to a certain need, and his removal from the leadership will lead to dissension and tribulation (miḥan) while his continuation in the position will lead to stability and prosperity for the Muslims, then his appointment as the imām should be approved. To al-Juwaynī, this principle is definite.<sup>141</sup>

However, his appointment shall not be valid until the bai'ah is given. This later principle, however, according to al-Juwaynī is not definite (maznūnah).<sup>142</sup>

#### 4. The Nature of the Appointment

When the imām is appointed whether by ahl al-ḥall wa al-ʿaqq, a predeceasing imām or by usurpation, the appointment is binding permanently on the imām, ahl al-ḥall wa al-ʿaqq and all the Muslims as long as the imām fulfils the required qualities and is free from any of the circumstances which requires disqualification (inkhilāʿ) or dismissal (khalʿ).<sup>143</sup> In principle, it is understood that,

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<sup>140</sup> Ibid., p. 327

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> al-Ghiyāthī(1), p. 128, al-Irshād, p. 425

according to al-Juwaynī in al-Ghiyāthī, the imām does not have the right to resign from his post except in certain circumstances which will be mentioned later.<sup>144</sup> Although al-Juwaynī used to say that the resignation is permissible (muḥtamal) in al-Irshād,<sup>145</sup> he changed his opinion in al-Ghiyāthī later. Ahl al-ḥall wa al-ʿaqd or the Muslims, in the absence of ahl al-ḥall wa al-ʿaqd, do not have the right to dismiss the imām on their own will without any legal reason.<sup>146</sup> In supporting this rule, al-Juwaynī argues that if the dismissal of the imām by ahl al-ḥall wa al-ʿaqd is permitted as they like, the establishment of the imāmate would not be stable, the purpose of the imāmate could not be achieved, the obedience to the imām could not be firmly established, the power of the imām could not continue and above all, the imāmate would be meaningless.<sup>147</sup>

##### 5. Procedure of the Appointment: the Attendance of the Witnesses during the Contract of the Imāmate

Regarding this issue, before giving his view, al-Juwaynī presents two different opinions of the scholars.

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<sup>144</sup> al-Ghiyāthī(1), pp. 129 - 130

<sup>145</sup> al-Irshād, p. 426

<sup>146</sup> Ibid., p. 128

<sup>147</sup> Ibid.



The first opinion is that the attendance of witnesses during the bai'ah to the imām is not required. Al-Juwaynī does not give any reason for this opinion.<sup>148</sup>

The second opinion is that the attendance of witnesses during the bai'ah to the imām is required. This opinion is adopted by al-Bāqillānī. To al-Bāqillānī, this principle is absolute. The evidence given by al-Bāqillānī for the principle is the bai'ah of 'Umar to Abū Bakr during the appointment of the latter. He argues that if 'Umar gave the bai'ah to Abū Bakr in isolation, the imāmate would not be stable. Also, if it is permissible to establish the imāmate by the bai'ah in isolation, certainly 'Umar and Abū Bakr would not have come to al-Saqīfah and would have given the bai'ah before the attendance of witnesses. According to al-Bāqillānī, the witnesses should be groups of people (aqwām) by whose attendance, publicity about the appointment can be accomplished.<sup>149</sup>

Between these two opinions, al-Juwaynī chooses an intermediate way, saying that perhaps (rubbamā) witnesses are needed to avoid denial or conflict. That is the reason for the delay of the bai'ah of Abū Bakr until the publicity

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<sup>148</sup> Ibid., p. 73

<sup>149</sup> Ibid., pp. 73 - 74, See also, al-Irshād, p. 424



(i<sup>c</sup>lān) is made.<sup>150</sup> Also, by mentioning the recommendation of witnesses during the contract of sale,<sup>151</sup> perhaps what al-Juwaynī wants to say is that in normal situation, witnesses for the contract of the imāmate is also recommended, not compulsory.

However, if the bai<sup>c</sup>ah which is made in secret is given by a person who possesses great power and high position, and by his bai<sup>c</sup>ah, the imāmate becomes powerful, according to al-Juwaynī, witnesses are not required. To him, this rule is definite.<sup>152</sup>

#### 6. The Prohibition of the Appointment of Two Imāms Concurrently

If the situation permits the appointment of a single imām over the whole Islamic territory (khutṭat al-Islam), the appointment of a single imām is compulsory and the appointment of two imāms concurrently is prohibited.<sup>153</sup> This rule is also applicable even though the territorial jurisdiction of the two imāms is different.<sup>154</sup> The bases

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<sup>150</sup> al-Ghiyāthī(1), p. 74

<sup>151</sup> Ibid.

<sup>152</sup> Ibid., pp. 74 - 75

<sup>153</sup> Ibid., p. 172, cf. also, al-Irshād, p. 425

<sup>154</sup> al-Ghiyāthī(1), p. 174

for this rule are ijmā'<sup>155</sup> and the fact that the purpose of the imāmate is to unite conflicting views and desires of the subjects, so that the country will be stable. This purpose cannot be accomplished except by having one single imām.<sup>156</sup> The appointment of two imāms concurrently to rule the whole country is a cause to destruction (mudda'āt al-fasād). Conflict and fighting will occur if each of them wants to execute each command.<sup>157</sup>

However, if the imām is unable to provide his protection over all Islamic territory due to its expansion or its separation by non-Islamic territory, the scholars differ.

Some of the scholars such as Abū Ḥasan [al-Ash'arī] and Abū Ishāq al-Isfarāyīnī<sup>158</sup> who al-Juwaynī describes as "our master (shaykhinā)" and "professor (al-ustādh)" respectively, hold the view that it is permissible to appoint two imāms concurrently if the situation makes the appointment of a single imam who is able to provide his

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<sup>155</sup> Ibid., p. 172

<sup>156</sup> Ibid., p. 173

<sup>157</sup> Ibid., p. 174

<sup>158</sup> He is Ibrāhīm bin Muḥammad bin Ibrāhīm bin Mahrān Rukn al-Dīn, d. 418 A.H./1027 C.E., One of the Shāfi'ite scholars of fiqh and uṣūl. (al-Ghiyāthi(1), p. 175)

protection over the whole Islamic territory difficult.<sup>159</sup> The reason for their view is that leaving the people without any imām to protect, to unite and to prohibit them from evil will lead them to destruction.<sup>160</sup>

However, al-Juwaynī differs from his shaykh and ustādh. According to him, if there is a barrier preventing the protection of the imām of reaching a certain portion of the Islamic territory after the imām has been appointed, the people in the portion to which the protection of the imām cannot reach, should only appoint an amīr as the person to refer and to obey. This amīr is not considered as an imām. The reason for this principle is that it is not permissible to leave people without being protected.<sup>161</sup> If the barrier disappears, the amīr and the people of the separated area should give their obedience to the imām. If the imām approved the appointment of the amīr, he remains the amīr for the area. If the imām decides otherwise, the decision of the imām should be obeyed.<sup>162</sup>

If there is no imām who is already appointed, two

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<sup>159</sup> al-Ghiyāthī(1), p. 175

<sup>160</sup> Ibid., pp. 175 - 176, this opinion of al-Ash<sup>c</sup>ari cannot be found in any of al-Lumā<sup>c</sup>, al-Ibānah or Maqālāt. Possibly, al-Juwaynī refers to another book of al-Ash<sup>c</sup>ari.

<sup>161</sup> Ibid., p. 176

<sup>162</sup> Ibid.



parts of the Islamic territories are separated and the appointment of a single imām becomes difficult, people of each part of the territory should appoint an amīr for each area. None of them is considered as imām. The permission to appoint two amīrs in such a case is due to necessity (darūrah).<sup>163</sup> When the imām is appointed, the two amīrs should submit (yastaslimā) to the imām. Then, the imām will decide what he thinks appropriate.<sup>164</sup>

If two imāms are appointed at the same time by two different groups of contractors (āqidūn) in two different regions (qatrayn), with one not knowing about the appointment of the other group, and with both imāms possessing qualification for the imāmate, both appointments are void. The reason is that the imām must be independent in his duty. The existence of two imāms makes the independence impossible.<sup>165</sup>

If times of the two appointments are different, the earlier appointment is valid and the second is void. If times of both appointments are unclear and it is difficult to prove them, both appointments are void. The reason is that it is not permissible to delay the appointment of the

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<sup>163</sup> Ibid., pp. 176 - 177

<sup>164</sup> Ibid., 177 - 178

<sup>165</sup> Ibid., p. 178



imām and to leave the country in uncertainty due to the difficulty in proving the times of the two appointments.<sup>166</sup>

If one of them claims to be appointed earlier than the other and demands the other to take oath, his demand should not be responded to. The post of the imāmate should not be proven by taking oath from the person appointed because he is only a representative of the people. The purpose of the post of the imām is not for the representative but for the people.<sup>167</sup>

In discussing the issue of the appointment of two imāms concurrently, it is noticed from the two different works of al-Juwaynī, al-Ghiyāthī and al-Irshād, that al-Juwaynī has two different attitudes toward the issue. In his early work, al-Irshād, it can be observed that there is uncertainty of his opinion in deciding the rule (ḥukm) regarding the appointment of two imāms concurrently in the case if the Islamic territory is vast as he says:

"the appointment of two imāms in one small area (fī saq° wāḥid mutadāyiq al-khiṭat wa al-makhālif) is not permissible; there was an ijmā° on this; but if the area is vast and the distance between the two imāms is great, there is a possibility [for it to be permissible]. [However] it is not based on any of the

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<sup>166</sup> Ibid., p. 179

<sup>167</sup> Ibid.

definite evidences (al-qawāṭi<sup>c</sup>)<sup>168</sup>

Perhaps, it is correct to say that the quotation indicates that al-Juwaynī is inclined to permit the existence of two imāms concurrently if the Islamic territory is vast. If this assumption is correct, then, his opinion in al-Ghiyāthī contradicts his opinion in al-Irshād as in al-Ghiyāthī he absolutely rejects the existence of two imāms even if the Islamic territories are separated by non-Islamic territory.

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<sup>168</sup> al-Irshād, p. 425

## CHAPTER TWO

### THE QUALIFICATIONS REQUIRED FOR THE IMĀM

Al-Juwaynī divides the qualities required for the imām into four categories<sup>1</sup>:

- (i) Qualities which are related to the senses
- (ii) Qualities which are related to the limbs and organs
- (iii) Inherent qualities
- (iv) Acquired qualities

#### 1. Qualities which are Related to the Senses

##### 1.1. Ability to See

The imām must be able to see. According to al-Juwaynī, there is no dispute among the scholars on the requirement of this quality. Therefore, it is understood that an ijmā' has been established as the basis for this requirement.

A blind person is not qualified for the post of the imāmate because blindness makes the person incapable and

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<sup>1</sup> al-Ghiyāthī(1), p. 77

dependent on others in performing the duties of the imāmate. However, one who is dim-sighted is qualified.<sup>2</sup>

### 1.2. Ability to Hear

The imām must be able to hear. A deaf person is not qualified for the imāmate. The reason is similar to that for the blind person. However, one who has weak hearing (al-wiqr wa al-ṭarsh) is qualified.<sup>3</sup>

### 1.3. Ability to Speak

The imām must be able to speak. A dumb person is not qualified for the imāmate.<sup>4</sup>

The absence of the sense of smell and taste does not disqualify a person from the imāmate as it does not affect the performance of the duties of the imāmate.<sup>5</sup>

## 2. Qualities which are Related to the Limbs and Organs

Regarding the qualities which are related to the

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.



limbs and organs, al-Juwaynī does not provide a list of the qualities, but instead he only provides two following principles:

(i) Any loss of limb or organ which does not jeopardise the performance of the duties of the imāmate does not disqualify a person from the imāmate. Therefore, a eunuch (majbūb and khasī) is qualified for the imāmate.<sup>6</sup>

(ii) Any loss of limb or organ which jeopardises the performance of the duties of the imāmate or contradicts the purpose of the imāmate, disqualifies a person from the imāmate. Therefore, according to al-Juwaynī, the loss of two hands or two feet does not disqualify a person from the imāmate as he says:

"The basis (ta'wīl) for the imāmate is capacity, power (najdah), knowledge (dirāyah) and trustworthiness (amānah). Physical defect does not contradict reason (al-ra'y) and the performance of duty of protection. Whenever required, carrying him on vehicles (marākib) is easy."<sup>7</sup>

However, according to him, this opinion is not definite.<sup>8</sup>

The same rule is applicable to the case if the loss is

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<sup>6</sup> Ibid., p. 78

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

one eye or one foot which does not reach the level of disability and palsy.<sup>9</sup>

The loss of any limb or organ which makes the appearance unpleasant (yasū' al-manzar) such as loss of an eye or a nose, does not disqualify a person from the imāmate. This rule is definite.<sup>10</sup> On this rule, al-Juwaynī argues against the scholars who hold the view that the amputation of a nose or loss of an eye constitutes disqualification. Al-Juwaynī says that if it is so, the ugliness should also be included as a requirement for disqualification, and beauty and perfection (i'tidāl) should be included as a requirement for qualification whereas it is agreed upon by various groups of scholars that the latter is not a requirement for the imāmate.<sup>11</sup>

### 3. Inherent Qualities

#### 3.1. Descent from Quraysh

The imām must be descended from Quraysh. Any one who is not descended from Quraysh is not qualified for the imāmate. The basis for this requirement is the consensus of

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid., p. 79

<sup>11</sup> Ibid.

the ‘ulamā’. There is no one who opposed this requirement except Dirār bin ‘Amr.<sup>12</sup> However, according to al-Juwaynī, Dirār bin ‘Amr is one whose agreement or disagreement is not taken into account.<sup>13</sup>

Al-Juwaynī rejects the hadith "the imāms must be from Quraysh" as used by some scholars as the basis for the requirement of this quality. The reason, according to him, is that the hadith does not reach the status of tawātur.<sup>14</sup>

Regarding this requirement, it is noticed from his three works Lam’ al-Adillah, al-Irshād and al-Ghiyāthī that his opinion on this requirement passes through three stages of development.

In Lam’ al-Adillah, there is no indication that al-Juwaynī rejects the above hadith as the basis for this requirement as he says:

"No one is qualified for the imāmate except one who fulfils all requirements. One of them, is that he must be a Qurashī as the Messenger of God says that the imāms must be from Quraysh".<sup>15</sup>

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<sup>12</sup> Dirār bin ‘Amr is the Qāḍī Abū ‘Amr. He used to be a student of Wāsil bin ‘Ifā’ but later established al-Dirāriyyah. He still lived in 180 A.H. (al-Ghiyāthī(2), p. 62.

<sup>13</sup> al-Ghiyāthī(1), pp. 79 - 80

<sup>14</sup> al-Ghiyāthī(1), p. 80

<sup>15</sup> Lam’ al-Adillah, p. 116



It is understood from this that he absolutely agrees that the ḥādīth is the basis for the requirement of this quality. There is no mention about the consensus at all in Lam' al-Adillah.

In al-Irshād, al-Juwaynī develops his opinion stating that the opinion which requires the quality for the imāmate belongs to the ones who he describes as "our masters" (aṣḥābinā) and he continues saying that, however, there are people (nās) who disagree with this requirement. Al-Juwaynī does not give certainty of opinion between these two different views. He only says:

"To me, there is possibility [for either]"<sup>16</sup>

From this statement, it can be understood that what al-Juwaynī wants to say is that there is a possibility that descent from Quraysh may not be required.

In al-Ghiyāthī, although al-Juwaynī rejects the ḥādīth as afore-mentioned as the basis for this requirement, he still requires the quality for the imāmate by referring to ijmā' of the previous 'ulamā' as he says:

"the previous 'ulamā' (al-māḍiyyīn) are still known (bāyihīn) for specifying the post for Quraysh. It has

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<sup>16</sup> al-Irshād, pp. 426 - 427



never occurred in the past that anyone who is not Quraysh intends (tashawwafa) to hold the post or to claim it. If it is permissible, certainly, there would have been people who possessed power whether they are entitled or not, struggling for the post."<sup>17</sup>

Al-Juwaynī also argues that even the heretic Fāṭimids (al-Fāṭimiyyīn), when they emerged in Egypt to strive for the post of the imāmate, did not immediately claim the imāmate but before they made their claim, they firstly made a forged claim that they are from the descent of the prophet to qualify them as Quraysh.<sup>18</sup>

Al-Juwaynī admits in al-Ghiyāthī that he does not see any justification as far as the purpose of the imāmate is concerned for specifying the post for the Quraysh but he says that it is the right of God to decide whatever He wishes.<sup>19</sup> In another place al-Juwaynī says that the reason for specifying the post for the Quraysh is as a respect (tashrīf) for the descent (shajarah) of the Prophet Muḥammad.<sup>20</sup>

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<sup>17</sup> al-Ghiyāthī(1), p. 80, See also Ibid., p. 313

<sup>18</sup> Ibid., pp. 80 - 81

<sup>19</sup> Ibid., pp. 80 - 81, See also p. 308

<sup>20</sup> Ibid., p. 308

### 3.2. Maleness

The imām must be a male.<sup>21</sup> According to al-Juwaynī, the 'ulamā' agree that a woman is not qualified to be the imām.<sup>22</sup> The reason for the disqualification is that women are commanded [by sharʿ] to cover themselves (talzīm khadrahā) whereas most of the duties of the imām require the imām to be in public (al-zuhūr wa al-burūz).<sup>23</sup> In other words, it can be understood that these two rules are contradictory.

In another place in al-Ghiyāthī, al-Juwaynī states regarding this requirement that there is no need for elaboration for this quality. Probably because he has explained the similar reasons when discussing the requirements for ahl al-hall wa al-ʿaqq as aforementioned.<sup>24</sup>

### 3.3. Free Status.

The imām must be a person who possesses free status.<sup>25</sup>

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<sup>21</sup> Ibid., p. 82

<sup>22</sup> al-Irshād, p. 427

<sup>23</sup> al-Ghiyāthī(1), p. 91

<sup>24</sup> See Chapter 1, pp. 43 - 44

<sup>25</sup> al-Ghiyāthī(1), p. 82, al-Irshād, p. 427, Lamʿ al-Adillah, p. 116

Therefore, a slave is not qualified for the imāmate. For this requirement also, al-Juwaynī does not see any need to explain the reasons. Probably it is due to the same reason for the above requirement. Al-Juwaynī has also explained the reason for disqualification of a slave for ahl al-hall wa al-'aqq before.<sup>26</sup>

### 3.4. Islām

The imām must be a Muslim.<sup>27</sup> Therefore, it is understood that any non-Muslim whether he is a harbī, musta'man or dhimmī is not qualified to be the imām. Al-Juwaynī does not mention this requirement in his al-Ghiyāthī when discussing the qualities required for the imām. However, it can be understood that he requires Islām as a quality for the imām when he discusses the circumstances which require the disqualification and dismissal of the imām as he says:

"Islām is the foundation (al-aṣl wa al-'isām). If the imām diverts from his religion [Islām], his disqualification, his removal and discontinuation from his position is well-known."<sup>28</sup>

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<sup>26</sup> See Chapter 1, p. 44

<sup>27</sup> al-Irshād, p. 427

<sup>28</sup> al-Ghiyāthī(1), pp. 98 - 99

### 3.5. Sound mind (nahīzat al-‘aql)

The imām must be a person of sound mind.<sup>29</sup> Therefore, it is understood that an insane person is not qualified to be the imām. Any person of sound mind is able to understand the reason for the disqualification of this group. Perhaps, that is the reason why al-Juwaynī does not see any need to elaborate on this quality.<sup>30</sup>

### 3.6. Age of Majority

The imām must be a person who has reached the age of majority (bulūgh).<sup>31</sup> In the same way as with some previous qualities, al-Juwaynī does not see any need to give elaboration on this quality.<sup>32</sup>

### 3.7. Bravery

The imām must be a brave person. Al-Juwaynī describes bravery as a supreme quality. A cowardly person is not qualified to be the imām.<sup>33</sup> According to al-Juwaynī bravery

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<sup>29</sup> al-Ghiyāthī(1), p. 82

<sup>30</sup> Ibid., p. 82

<sup>31</sup> Ibid.,

<sup>32</sup> Ibid.,

<sup>33</sup> Ibid., p. 83



is inherent and cannot be acquired [by effort].<sup>34</sup> However, as a required quality, bravery without being associated with the perfection of mind (kamāl al-ʿaql) is not accepted.<sup>35</sup> Therefore, an irrational attacker (mugtahim hujām) is not qualified for the post of the imāmate as he says:

"The post needs rational thinking (al-ra'y) more than the firmness of heart. Rational thinking should be given priority before bravery. Rational thinking comes first, bravery comes second."<sup>36</sup>

#### 4. Acquired Qualities

##### 4.1. Knowledge

The imām must be one who possesses vast knowledge of al-sharīʿah and reaches the level of a mujtahid<sup>37</sup> qualified to be a muftī,<sup>38</sup> so that he is able to be independent in making decisions without making reference to others. The Imām is to be followed (al-matbūʿ) and not a follower (al-tābiʿ). If the imām has to refer to ʿulamāʾ or muftī (singular of muftīn), he is a follower, not a leader and an

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<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid., pp. 83 - 84.

<sup>37</sup> al-Ghiyāthī(1), p. 84, al-Irshād, p. 426, Lamʿ al-Adillah, p. 116

<sup>38</sup> al-Ghiyāthī(1), p. 84, pp. 153 - 154, al-Irshād, p. 426

independent person. This is a contradiction to the requirement that the imām must be independent.<sup>39</sup> According to al-Juwaynī, this requirement is agreed upon.<sup>40</sup>

Being a mujtahid with vastness of knowledge does not mean that the imām must make decisions alone. It is recommended by God that the imām should consult others especially in difficult matters (muḍalāt) to make decisions as the Qur'ān says:

"Consult them in the affair"<sup>41</sup>

Consultation does not contradict the possession of vast knowledge and independence of a mujtahid. Moreover, one of the crucial point (sirr) of the imāmate is to collect various opinions of the people and unite them by making decisions himself. The result of his thinking from the mixture of his vast knowledge and opinions of the people which he obtains through consultation will be more fruitful (jāliban) and will be more able to avoid any calamity from the conflict of diversity than if he makes the decisions without consultation. Regarding this al-Juwaynī says:

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<sup>39</sup> al-Ghiyāthī(1), p. 84, al-Irshād, p. 426

<sup>40</sup> Ibid.

<sup>41</sup> al-Qur'ān, Ṣūrah Āli 'Imrān (3):159

"A man who makes a decision without consultation (sāhib al-istibdād) may always divert from the path of the righteous people."<sup>42</sup>

#### 4.2. Piety (al-taqwā wa al-wara')

The imām must be a pious person.<sup>43</sup> To support his opinion on this requirement, al-Juwaynī only uses his reason as he says:

"If a fāsiq cannot be trusted with one fil, how could he be trusted to conduct the affairs of the Muslims?"<sup>44</sup>

and

"A fāsiq father cannot be trusted with the wealth of his child despite his great passion toward his child. How could a fāsiq who does not fear God be trusted in the great imāmate (al-imāmah al-‘uzmā). How could one who cannot [even] fight his own evil will (‘aqluh hawāh wa nafs al-ammārah bi al-sū') be trusted to run the country of Islām"<sup>45</sup>

#### 4.3. Possession of Power and Capacity (Dhū Najdah wa Kifāyah)

The imām must be a person who possesses power and capacity. However, al-Juwaynī does not explain clearly what

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<sup>42</sup> al-Ghiyāthī(1), p. 87

<sup>43</sup> al-Ghiyāthī(1), p. 88, Lam' al-Adillah, p. 116

<sup>44</sup> al-Ghiyāthī(1), p. 88

<sup>45</sup> Ibid.



he means by al-najdah wa al-kifāyah.<sup>46</sup> In al-Juwaynī's writings the meaning of al-najdah wa al-kifāyah is unclear.<sup>47</sup> However, it can be understood that what he means

<sup>46</sup> Lam<sup>c</sup> al-Adillah, p. 116, al-Irshād, p. 426, al-Ghiyāthī(1), pp. 90. Probably the explanation for these two terms by al-Juwaynī's student, al-Ghazālī, in his Faḍā'ih, is clearer than the explanation by al-Juwaynī himself. According to al-Ghazālī,

"what is meant by al-najdah is possession of power (zuhūr al-shawkah wa mawfūr al-<sup>c</sup>uddah), assistance by soldiers (istizhār bi al-junūd), organization of the army (‘aqd al-alwiyah wa al-bunūd) and capability in preventing the rebels, fighting the unbelievers and evil-doers, eliminating religious dissension before its harms become wide-spread, with the assistance of the followers" (Faḍā'ih, p. 182)

and al-kifāyah:

"is possession of capacity to seek the right way in difficult matters (al-tahaddī li haqq al-masālih fi mu<sup>c</sup>addalāt al-umūr) and possession of capacity to gain information to make a correct decision at the time when various harmful effects are possible (al-ittilā<sup>c</sup> ‘alā al-maslak al-muqtasad ‘ind ta<sup>c</sup>āruḍ al-shurūr) (Faḍā'ih, p. 185)

Carole Hillenbrand interprets al-Ghazālī's meaning of al-kifāyah as "competence to govern" (Hillenbrand, Carole, "Islamic Orthodoxy or Realpolitik? Al-Ghazālī's views on Government" Iran, vol. 26, 1988, p. 81)

<sup>47</sup> In Lam<sup>c</sup> al-Adillah, possession of al-najdah and al-kifāyah are made a separate qualities from ijtihad, acuteness of opinion in the matters relating to government and piety. (Lam<sup>c</sup> al-Adillah, p. 116) In al-Irshād, al-Juwaynī defines al-kifāyah as a combination of various qualities i.e. capacity in conducting affairs, possession of al-najdah in preparing armies and fortresses, sound judgement and bravery. (al-Irshād, p. 426). Here, possession of al-najdah is considered as a part of al-kifāyah. In al-Ghiyāthī, in explaining the meaning of al-najdah wa al-kifāyah, al-Juwaynī states:

"the greatest objective of the imāmate cannot be achieved except by a person who possesses al-kifāyah, understanding, capacity in conducting the affairs, independence in performing the duties and despatching armies, bravery, not being controlled by fear to hit the necks and led by crudeness to abandon gentleness and mercy when the time comes. It is not sufficient to call a capable person (kāfī) if one is independent with regard to a simple matter (amr qarib) but not with regard to a great one. Therefore, the objective of the imāmate must be taken into consideration.



by al-naǧdah wa al-kifāyah is physical and mental capacity to fulfil the objectives of the imāmate with power and understanding. As to mental capacity, al-Juwayni says that the imām must be acute in making decisions in great matters and capable of forecasting the consequences of events.<sup>48</sup>

Al-Juwaynī supports the requirement of this quality by saying that the greatest objective of having the imām is to gather (jamʿ) different views from different groups of people and unite them. The difficulty (al-khabal wa al-ikhtilāl) in a country normally comes from chaos (idtirāb) in views. If people are not united under one view, the administration (tadbīr) will not be in order; the government (iyālat al-malik) will not be stable; and the country (al-bayḍah) will be uprooted.<sup>49</sup> Also, a country will be in chaos if there is no leader to whom the people can refer whenever difficulties arise and who can adjudicate between people in conflict.<sup>50</sup> This objective cannot be achieved except if the country is led by a leader who possesses capacity, understanding (dirāyah), guidance

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Independence of the imām in achieving them is required. This is the meaning of al-naǧdah wa al-kifāyah". (al-Ghiyāthī(2), p. 90).

In this statement, al-Juwaynī combines al-naǧdah wa al-kifāyah in one definition.

<sup>48</sup> op. cit., p. 88

<sup>49</sup> Ibid.

<sup>50</sup> Ibid., pp. 89 - 90

(hidāyah) in affairs, independence in the duty of dispatching armies and bravery.<sup>51</sup>

##### 5. Al-Juwaynī's Conclusion on the qualification for the imām

After discussing all qualities which are required for the imām, al-Juwaynī makes the following conclusion:

"The person who is qualified (sālih) for the imāmate is a male, free in status, Qurashi, mujtahid, pious, one who possesses power and capacity. These qualities can be summarized to two - independence (istiqlāl) and descent (nasab). Independence is comprised of possession of power, knowledge, peity, freedom and maleness "<sup>52</sup>

Although the list of the qualities required which al-Juwaynī mentions in the above quotation are not complete as he left out Islām, sound mind and age of majority, it can be understood that what he wants to say is that all the qualities other than descent from Quraysh, constitutes independence. In other words, other than that the imām must be a Qurashī, he must be an independent person.

Regarding this conclusion, it seems that the conclusion made by al-Juwaynī is not complete on two grounds. The first is that although the requirement of a

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<sup>51</sup> Ibid., p. 90

<sup>52</sup> Ibid., pp. 90 - 91

sound mind can be understood as a part of ijtihād as an insane person is unable to exercise ijtihād, al-Juwaynī still fails to mention Islām as a part of his conclusion. It would seem necessary for al-Juwaynī to mention Islam as a separate quality like descent. Therefore, the summary of all qualities should be Islām, descent from Quraysh and independence.

#### 6. Observation on the Development of al-Juwaynī's Thought on the Qualifications of the Imām

From the study of his three works which contains his main writings on the imāmate - Lam<sup>c</sup> al-Adillah, al-Irshād and al-Ghiyāthī, it can be observed that his thought on the imāmate took a period of time to be developed. His most developed thought is in al-Ghiyāthī. From the accumulated fourteen qualities which he requires for the imām. when taken together, he only mentions seven in Lam<sup>c</sup> al-Adillah - descent from Quraysh, free status, bravery, status of ijtihād, piety, acuteness of opinion in matters relating to government and possession of capacity.<sup>53</sup>

In al-Irshād, al-Juwaynī mentions nine qualities. Other than the seven qualities which he has mentioned in Lam<sup>c</sup> al-Adillah, he adds two more qualities - maleness and

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<sup>53</sup> Lam<sup>c</sup> al-Adillah, p. 116



Islām.<sup>54</sup>

In al-Ghiyāthī, the most complete work of al-Juwaynī on his political thought and especially on the imāmate, al-Juwaynī mentions thirteen qualities under the topic of the qualities required for the imām. In addition to what he has mentioned in Lam' al-Adillah and al-Irshād, he adds five more qualities - ability to see, ability to hear, ability to speak, the absence of the defect of limb and organ which jeopardise the objective of the imāmate and the age of majority.

As already noted, al-Juwaynī does not mention Islām as a requirement for the imāmate in al-Ghiyāthī when he enumerates the required qualities for the imām. However, it is understood that Islām is a requirement for the imāmate when he discusses the circumstances which require disqualification and dismissal of the imām in another chapter of al-Ghiyāthī.<sup>55</sup> Al-Juwaynī mentions Islām as a requirement in al-Irshād as afore-mentioned.

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<sup>54</sup> al-Irshād, pp. 426 - 427

<sup>55</sup> al-Ghiyāthī(1), pp. 98 - 99



7. Discussion on the requirement of infallibility  
(al-ʿiṣmah)

Infallibility from any sin (al-zalal wa al-khatal) is not required for the imām.<sup>56</sup>

A chapter of al-Ghiyathī is devoted to discussing the requirement of this quality. In this chapter, al-Juwaynī refutes the opinion of the Imāmites (al-Imāmiyyah) which hold the view that infallibility is required for the imām. The Imāmites (al-Imāmiyyah) believe that all twelve imāms who were designated by the Prophet are infallible<sup>57</sup> from any sin, be it great or small.<sup>58</sup> Al-Juwaynī also mentions that a fanatic group of the Imāmites, not only require the imām to be infallible but also any body who are involved with the duties of the imām such as governors, judges, tax collectors (jubāh al-akhriyah wa al-sadaqāt) and others. They also require the infallibility of the reporters of the traditions (al-akhbār), witnesses in court, muftis, animal tenders (sāsat al-dābbah), workers and slaves in despicable places.<sup>59</sup>

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<sup>56</sup> al-Ghiyāthī(1), p. 92, al-Irshād, p. 433

<sup>57</sup> al-Ghiyāthī(1), p. 92

<sup>58</sup> al-Ghiyāthī(1), p. 91 and p. 94, al-Irshād, p. 434,

<sup>59</sup> al-Ghiyāthī(1), p. 95

Al-Juwaynī describes the claim of the Imāmites as an intentional lie<sup>60</sup> and making mockery and fun of the religion.<sup>61</sup>

In refuting the views of the Imāmites and in supporting his own opinion, al-Juwaynī provides five following reasons:

(1) Since the basis for the appointment of the imām is ikhtiyār as al-Juwaynī has proved, to his satisfaction, it is impossible for the electors to investigate and find out whether the elected person is or is not infallible from any sin.<sup>62</sup>

(2) 'Alī and his two sons Ḥasan and Ḥusayn never claimed that they were infallible. In contrast, they admitted secretly and openly that they were fallible. Due to that reason, they sought forgiveness from God.<sup>63</sup>

(3) According to al-Juwaynī, even the prophets are not free from small sins (ṣaghā'ir al-dhunūb). A lot of Qur'anic verses are available regarding the sinfulness of

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<sup>60</sup> Ibid., p. 93

<sup>61</sup> Ibid., p. 95

<sup>62</sup> Ibid., pp. 92 - 93

<sup>63</sup> Ibid., p. 93

the prophets. For that reason, the prophets were seeking forgiveness from God through out their lives.<sup>64</sup>

(4) The imām does not perform alone all the duties relating to government. The imām appoints assistants - governors, judges, tax collectors and others to help him in performing his duties. The imām only performs by himself the minimum of his duties. From this fact, al-Juwaynī argues that if the infallibility of the imām is required, certainly all his assistants - governors, judges, tax collectors and others should also be required to have the same quality as they perform the duties on behalf of the imām whereas infallibility is not required for them according to the prominent opinion of the Imāmites.<sup>65</sup>

(5) Although it is true that the fanatic group of the Imāmites which was mentioned above maintained that all people who are involved with the performance of the duties of the imām are required to be infallible, this group still contradict themselves with their concept of taqiyyah (dissimulation) in which they require their imāms to practise a lie. Al-Juwaynī argues that if they require their imāms to lie, how could this group trust in the words

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<sup>64</sup> Ibid., pp. 93 - 94

<sup>65</sup> Ibid., pp. 94 - 95

and the actions of their imāms?<sup>66</sup>

## 8. Discussion on imāmat al-mafḍūl (the Imāmate of a Less Qualified)

### 8.1. The meaning of al-fāḍil, al-afḍal and al-mafḍūl

It is understood from the terminology used by al-Juwaynī in his works relating to imāmat al-mafḍūl that al-fāḍil and al-afḍal are synonyms which connote the best person among those who possesses all qualities required for the imām and al-mafḍūl means one who is qualified for the imāmate but is not the best among those qualified. His qualification is less than al-fāḍil or al-afḍal. The meaning of the virtue (al-faḍl) in relation to this political aspect, as used by al-Juwaynī, is not in terms of the closeness (taqarrub) to God indicated by one's words or deeds but in terms of one's fulfilment of the qualities required for the imāmate to conduct the affairs of the Muslims.<sup>67</sup>

### 8.2. The rules regarding imāmat al-mafḍūl

As usual, before presenting his opinion on imāmat al-

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<sup>66</sup> Ibid., p. 96

<sup>67</sup> Ibid., p. 165



mafdūl, in al-Irshād and al-Ghiyāthī, al-Juwaynī quotes various opinions from different groups. In Lam<sup>c</sup> al-Adillah, al-Juwaynī only states the practice of the Muslims in the past. However, although he does not state clearly what his opinion is, it can be understood that he approves of what he states.

From these various works, if the chronology which is made by Dr. Fawkia Hussein as afore-mentioned is correct,<sup>68</sup> it is found that al-Juwaynī was not settled in his opinion regarding this issue.

In his first work in which he includes the topic of the imāmate, Lam<sup>c</sup> al-Adillah, al-Juwaynī seems to agree that imāmat al-mafdūl is not permissible based on his statement that the previous Muslims chose the best person for the imāmate.<sup>69</sup>

In al-Irshād, the work which he wrote later than Lam<sup>c</sup> al-Adillah, before he presents his own opinion, he quotes the opinion of most of the Sunnites (Ahl al-Sunnah wa al-Jam<sup>c</sup>āh) that imāmat al-mafdūl is prohibited except if his non-appointment would lead to chaos (haraj) and fighting

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<sup>68</sup> See Chapter 1, p. 23

<sup>69</sup> Lam<sup>c</sup> al-Adillah, pp. 115 - 116

(hayajān fitan).<sup>70</sup>

However, in al-Irshād, al-Juwaynī does not see the opinion of the Sunnites as definite.<sup>71</sup> This can be understood that there is a possibility of saying that imāmat al-mafdūl may be permitted. Al-Juwaynī gives three grounds to support his argument:

- (1) Those who prohibit the appointment of al-mafdūl do not base their argument on any valid revealed evidence. The hadīth

"You should be led by the most knowledgable (agrar) among yourselves"<sup>72</sup>

which is the basis of the argument by those who hold this view does not reach the level of tawātur. It is a khavar āhād (singular of akhbār āhād).<sup>73</sup> Therefore, the opinion cannot be definite.

- (2) If the imāmate of a prayer by al-mafdūl is valid, why cannot the imāmate of the ummah be the same?

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<sup>70</sup> al-Irshād, p. 430

<sup>71</sup> Ibid.

<sup>72</sup> Aḥmad, Muslim (al-Irshād, p. 431)

<sup>73</sup> al-Irshād, p. 431

Al-Juwaynī says that the imāmate of al-afdāl is only a matter of preference, not obligation.<sup>74</sup>

- (3) There is no definite proof (dalīl qāṭi') indicating that a companion of the Prophet Muḥammad is better than the others although from the general presumption (ghālib 'alā al-zann), Abū Bakr is the best person among the Companions after the Prophet. The reports (al-akhbār) which are available on their virtues contradict one another and cannot be relied as definite.<sup>75</sup>

In al-Ghiyāthī, al-Juwaynī quotes two different opinions from different groups of scholars.

Some groups of the Zaydites (al-Zaydiyyah) hold the view that imāmat al-mafdūl or the appointment of a less qualified person is absolutely valid.<sup>76</sup>

A similar opinion is held by some groups who al-Juwaynī describes as "our scholars or our intellectual leaders" (a'immatina) although the appointment of the best person (al-afdāl al-aṣlah) is possible. The reason given by

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<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> al-Ghiyāthī(1), p. 96

these groups is that al-mafdūl also possesses all qualities for the imāmate and by those qualities, the objectives of the imāmate can also be achieved. The extensive virtues which are possessed by al-afdāl are not necessary (la qhinā 'anhā lā mandūḥah) for the imāmate. There is no difference in term of objective of the imāmate whether or not the imām possesses extensive virtues (al-faḍā'il).<sup>77</sup>

Most of the outstanding scholars of uṣūl (theology) hold the view that the appointment of al-mafdūl is not valid if the appointment of the best person (al-fāḍil) is possible.<sup>78</sup> A group of this scholars believe that this principle is definite<sup>79</sup> and another group believe that this principle is among the uncertain matters (al-maznūnāt) as it is not based on any revealed evidence.<sup>80</sup>

Among these various opinions, al-Juwaynī is inclined to the view held by the scholars of uṣūl that the appointment of al-mafdūl is not valid if the appointment of al-fāḍil is possible. However, this principle is not definite due to the lack of any valid revealed evidence.

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<sup>77</sup> Ibid., p. 167

<sup>78</sup> Ibid., p. 167

<sup>79</sup> Ibid.

<sup>80</sup> Ibid., pp. 166 - 167



Hence, according to al-Juwaynī, in al-Ghiyāthī, the appointment of the best among the qualified person (al-afdal al-aṣlah) for the imāmate is compulsory whenever possible and with no obstacle preventing it. This principle is definite.<sup>81</sup> In another separate statement, al-Juwaynī says that in such a situation, the appointment of al-mafdūl is prohibited.<sup>82</sup>

Al-Juwaynī bases this opinion on the grounds that the best person is the most beneficial one for the interests of the Muslims<sup>83</sup> and to find one who possesses extensive (mazīd) capacity, guidance (hidāyah) and knowledge is not easy.<sup>84</sup> Therefore, it is understood that, since the one with such extensive qualities is available, the opportunity must be used by the Muslims to achieve the utmost benefit.

However, it is important to mention that the appointment of al-afdal is not valid except if it is contracted by the people who are able to create power and strength (man'ah wa shawkah) for the imām.<sup>85</sup>

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<sup>81</sup> Ibid., pp. 167 - 168

<sup>82</sup> Ibid., p. 169

<sup>83</sup> Ibid., p. 168

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

In al-Irshād, it is noticed that al-Juwaynī is more inclined to say that imāmat al-mafḍūl is possible but reverses his opinion in al-Ghiyāthī by saying that the prohibition of imāmat al-mafḍūl is definite (yajibu al-qatʿ)<sup>86</sup> whenever possible and with no obstacle for the appointment.

However, there are two circumstances in which imāmat al-mafḍūl is permitted. According to al-Juwaynī, there is no dispute among the scholars regarding the permission in these circumstances:

(1) If the appointment of al-fāḍil is difficult and the appointment of al-mafḍūl is required for the interests of the Muslims due to the inclination of the people (al-nās) and those who possess power in the community.<sup>87</sup>

This circumstance is similar to the case when the appointment of the imām is made, the existing imām was the best among the qualified but later there emerges a better qualified person than him but the appointment of the latter cannot be made without facing obstacles. In this circumstance, the existing imām, who becomes al-mafḍūl due

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<sup>86</sup> Ibid., p. 96

<sup>87</sup> Ibid., p. 167

to the emergence of the latter, should remain in the post.<sup>88</sup>

(2) If the appointment of al-fāḍil would lead to chaos (ikhtibāt) and evil (fasād) and in contrast, the appointment of al-mafḍūl would lead to unity (irtibāt) and righteousness.<sup>89</sup>

The reason for the permission in these two circumstances is to achieve the objectives of the appointment of the imām - to give benefit (istiṣlāḥ) to the ummah. Since through the appointment of al-mafḍūl, the objectives can be achieved and the opposite is the case, if the al-afḍal is appointed. Therefore, al-mafḍūl should be appointed.<sup>90</sup>

### 8.3. Priority of quality

#### 8.3.1. When all the Required Qualities are Fulfilled

Regarding the priority among the various required qualities, according to al-Juwaynī, possession of capacity should be given priority over piety. Therefore, if there

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<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

are two persons who both possess all the required qualities for the imāmate but one is extensive in piety and another is extensive in the possession of capacity, the latter should be appointed as the imām.<sup>91</sup>

In the case of there being two persons who possess all the required qualities but one is more knowledgable in the religion of Islām (afqah) and another is more knowledgable in warfare, the priority for the appointment of the imām should be given according to the current needs of the country. If the country is in order, free from elements of violence but facing problems of innovation (bid'ah) and deviation, the one who is more knowledgable in the religion of Islam should be appointed as the imām. If the situation is the reverse of the above and bravery and power are required to overcome the problems in the country, the one who is more knowledgable in warfare should be appointed as the imām.<sup>92</sup>

#### 8.3.2. When Some Required Qualities are Absent

If there is no one who fulfils all the required qualities for the imāmate as afore-mentioned, it does not mean that the obligation to establish the imāmate is

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<sup>91</sup> Ibid., p. 170

<sup>92</sup> Ibid., pp. 170 - 171



dropped. If such a situation occurs, the obligation to appoint an imām is still an obligation on the Muslims by appointing the best person among themselves. Leaving the Muslims in chaos without a leader to unite them is not permitted.<sup>93</sup>

To determine who is the best among those who do not fulfil all the required qualities, al-Juwaynī provides a chapter in his al-Ghiyāthī discussing some qualities for which priority should be given.<sup>94</sup> The qualities are descent from Quraysh, knowledge, possession of capacity and piety. According to al-Juwaynī, among these four qualities, descent from Quraysh is the requirement which should be given the lowest priority, then followed by knowledge, possession of power and peity.

As to the requirement of descent from Quraysh, al-Juwaynī does not see any logical need as far as the objective of the imāmate is concerned, as mentioned earlier.<sup>95</sup> Probably due to this reason, al-Juwaynī classifies the requirement of the descent from Quraysh as the lowest position in term of priority among the four requirements discussed. Therefore, if there is no one of

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<sup>93</sup> Ibid., p. 309

<sup>94</sup> See Ibid., pp. 308 - 315

<sup>95</sup> Ibid., p. 313

the descent from Quraysh who fulfils all the required qualities, one who possesses knowledge, capacity and piety should be appointed.<sup>96</sup> When such a person is appointed, his position is similar to the imām who fulfils all the required qualities. Therefore, all his commands must be executed.<sup>97</sup> Al-Juwaynī justifies this rule by saying that knowledge is a great equipment (al-‘uddah al-kubrā wa al-‘urwah al-wuthqā) by which the imām would be independent in applying the law of Islam.<sup>98</sup>

If a Qurashī who fulfils all the rest of the required qualities emerges after the above-mentioned person has been appointed, the Qurashī should be appointed as the imām replacing the latter if the situation permits because the Qurashī is the original person who is entitled to the post of the imāmate and the latter is only a replacement.<sup>99</sup> If the appointment of the Qurashī is difficult, the latter should remain in the post.<sup>100</sup>

At the time when no one who is descended from Quraysh exist, if there is no one among the capable and pious

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<sup>96</sup> Ibid., p. 308

<sup>97</sup> Ibid.

<sup>98</sup> Ibid., p. 313

<sup>99</sup> Ibid., pp. 309 - 310

<sup>100</sup> Ibid., p. 309

Muslims who possesses knowledge reaching the status of a mujtahid, a person who possesses power, capacity and independence (istiqlāl) in the great matters should be appointed as the imām.<sup>101</sup> When he is appointed as the imām, his position is similar to the imām who possesses all the required qualities. All his commands must be executed. As such a person does not have sufficient knowledge to be independent in his duties, he should refer to religious scholars (a'immat al-dīn) when facing difficulties in making legal decisions (ahkām al-shar').<sup>102</sup>

Al-Juwaynī justifies this rule by saying that although knowledge is a requirement for the imāmate but if there is no one who is knowledgable ('ālim), uniting people under a capacity person who is able to ask for a fatwā from the scholars is more appropriate than leaving them without any control (tarakahum sudā) and in chaos.<sup>103</sup>

Piety is the required quality which is placed in the highest position in terms of priority among the required qualities. If there is no one who is a Qurashī and knowledgable but there is only a capable person who is a fāsiq, such capable person should not be appointed as the

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<sup>101</sup> Ibid., p. 310

<sup>102</sup> Ibid.

<sup>103</sup> Ibid., pp. 310 - 311



imām if his transgression of prohibited things (muharramāt) and his daring attitude in committing them would be harmful to the Muslims. The reason is that if he becomes powerful with such fisq, the disadvantages would be more than any advantages for the Muslims and religion. He would use the power for evil instead of defending the land of Islām. This is contradictory to the purpose of the imāmate.<sup>104</sup>

However, if his presence in the post is needed due to certain reasons such as if a portion of the territory of Islām has been conquered by unbelievers (kuffār) and there is no one who would be obeyed by people to dispatch the armies of Islām except him, he should be appointed as the imām due to such need.<sup>105</sup>

If the capable person is a fāsiq but he is committed to protecting the territory of Islām and prepared to carry out any duties which bring benefit to Islām, according to al-Juwaynī, he should be appointed as the imām due to necessity and at the same time, the maximum effort should be made to correct him. The reason for this rule is that leaving the territories (mamālik) without a protector (rā'ī) would lead to a dangerous result such as the deterioration of the affairs and the neglect of the frontiers. In

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<sup>104</sup> Ibid., p. 311

<sup>105</sup> Ibid., pp. 311 - 312



contrast, the appointment of such a person can protect the territory from evil people (dhawī al-‘arāmah) and rebels (thawwār). That is more beneficial for the people than leaving them without a protector because the absence of protection would lead to a destructive result.<sup>106</sup> Al-Juwaynī also justifies this rule by saying that the purpose of requiring all the afore-mentioned qualities is to gain capacity and independence in conducting affairs. Capacity is the primary requirement.

Based on the above order of priority, if there are two persons - one who is from Quraysh but he is neither knowledgable nor capable and another one is knowledgable, capable and pious, the latter should be given priority for the imāmate as one who has no capacity has no place as the imām in the first place.<sup>107</sup>

In the case if one of the two knowledgable persons is not from Quraysh but his knowledge does not reach the status of independence for conducting the affairs, while the other one is a non-Quraysh but his knowledge reaches the status of independence for conducting the affairs, the former should be given priority for the imāmate if he does not suffer from mental disorder. In this case, he should

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<sup>106</sup> Ibid., p. 312

<sup>107</sup> Ibid., p. 314

refer to wise people (al-hukamā' wa al-'uqalā') in making decisions. If the former suffers from mental disorder and is a mugallid, the latter should be given priority.<sup>108</sup>

As a conclusion, al-Juwaynī says that power without knowledge is more appropriate than knowledge without power.<sup>109</sup>

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<sup>108</sup> Ibid., pp. 314 - 315

<sup>109</sup> Ibid., p. 315

## CHAPTER THREE

### THE DISQUALIFICATION AND DISMISSAL OF THE IMĀM

#### 1. The Meaning of Disqualification (inkhilā') and Dismissal (khal')

The imām may be deposed from his position of the imāmate by two methods - disqualification and dismissal. Disqualification means that the imām is deposed by law from the post of the imāmate without undergoing any procedures when certain circumstance occurs. In other words it may be called automatic deposal. Dismissal means that the imām is not deposed by law but the imām should be deposed by the person who appoints him when certain circumstance occurs.

There are two bases of differences between disqualification and dismissal. Regarding these differences, explanation by Muhammad Shākir al-Sharīf in his book al-Tarīq ilā al-Khilāfah, shows clearly what is meant by al-Juwaynī. The following is his explanation:

1. The circumstances which require disqualification are manifest (zāhir) whereby there is no need of serious observation or investigation to find out the negative effect from the circumstances on the Muslims. Whereas the circumstances which require dismissal need serious observation and investigation to find out negative effect from



the circumstances on the Muslims.<sup>1</sup>

2. Dismissal requires establishment (inshā'). This means that the imām is not automatically deposed by the occurrence of the circumstance but he should be deposed by ahl al-hall wa al-'aqd. If ahl al-hall wa al-'aqd decide to depose him, he ceases to be the imām from the time of the deposition. From then, ahl al-hall wa al-'aqd should appoint a new imām. If the deposed imām refuses to step down but retains his position with power in his hands, other steps should be taken.<sup>2</sup> In contrast, disqualification does not require establishment (inshā'). This means that the imām is deposed by law (ḥukm shar'). His imāmate ceases by the occurrence of the circumstance or the cause. Therefore, from then, the duty of people to obey him ceases. It is also not permissible for ahl al-hall wa al-'aqd to reappoint such a person. If they appoint such a person, their qualification as ahl al-hall wa al-'aqd becomes void on the grounds that they have betrayed the trust given to them and the person appointed is not considered as a legitimate imām.<sup>3</sup>

Basically, the circumstances which require disqualification or dismissal are those which contradict the required qualities or contradict the objective of the imāmate. The following are the circumstances which require disqualification and dismissal:

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<sup>1</sup> Muḥammad Shākir al-Sharīf, al-Tarīq ilā al-Khilāfah, Dār al-Nahḍah al-Islāmiyyah, 1992, p. 38

<sup>2</sup> Ibid.

<sup>3</sup> Ibid., p. 39



## 2. Circumstances which Require the Disqualification of the Imām

### 2.1. Deviation from Islām

The imām should be disqualified (inkhulī'a) from the post of the imāmate if he deviates from Islām or commits apostasy. He is not permitted to retain his position as the imām even though he renews his Islām. He may retain his position only if his appointment to the post is renewed by a new election.<sup>4</sup>

Islām is the basic requirement for the imāmate as al-Juwaynī says:

"Islām is the foundation (al-aṣl wa al-ʿisām) [for the imāmate]."<sup>5</sup>

### 2.2. Madness or Mental Disorder

The imām should be disqualified if he suffers from complete madness (junūn mutbiq). The rule is similar if the imām suffers from mental disorder, idiocy or defect in reasoning about which the obviousness of its existence does not need any serious observation to find out and it

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<sup>4</sup> al-Ghiyāthī(1), pp. 98 - 99

<sup>5</sup> Ibid., p. 98

existence makes the imām difficult to be independent and capable.<sup>6</sup>

The reason for this principle is that with these conditions, the imām is incapable of fulfilling the objectives of the imāmate - carrying out the important matters, protecting the country and uniting different types of people. Regarding this reason al-Juwaynī says that with these conditions, the presence of the imām is meaningless.<sup>7</sup>

### 2.3. Blindness

The imām should be disqualified from the post of the imāmate if he loses his sight.<sup>8</sup>

However, defect in sight by which the imām is still able to identify things (al-tawassul ilā al-idrāk) should not disqualify the imām from the post of the imāmate. This rule is also applicable whether before the contract of the imāmate or after the imām has been appointed as the imām.<sup>9</sup>

The reason for this rule has been mentioned during the

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<sup>6</sup> Ibid., p. 99

<sup>7</sup> Ibid.

<sup>8</sup> Ibid., pp. 118 - 119

<sup>9</sup> Ibid., p. 119

discussion on the qualities required for the imām.<sup>10</sup>

#### 2.4. Deafness

The imām should be disqualified from the post of the imāmate if he suffers from serious deafness (al-ṣamam al-bāliḡh).<sup>11</sup> If the imām has ability to hear although very weak, he should not be disqualified from his post of the imāmate.<sup>12</sup>

The reason for this rule has also been mentioned when discussing the qualities required for the imāmate.<sup>13</sup>

#### 2.5. Dumbness

The imām should be disqualified from the post of the imāmate if he suffers from dumbness. Although al-Juwaynī does not mention specifically the disqualification which is due to this circumstance, it can be understood from his statement that this circumstance requires the imām's disqualification from his post. The following is his

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<sup>10</sup> See Ibid., p. 77

<sup>11</sup> Ibid., p. 119

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., p. 77

statement:

"..the defect of any sense or the loss of any organ or limb is considered as in the same category [i.e. the application is the same whether before the contract is made or after the contract has been made (al-dawām bi al-ibtidā')]".<sup>14</sup>

It can also be understood from the discussion on the required qualities which are related to the senses.<sup>15</sup> Al-Juwaynī does not discuss this circumstance probably because he avoids discussion on similar point. Due to this reason, al-Juwaynī only includes the rest of the circumstances which he has mentioned during the discussion on the required qualities which are related to the senses, in a general statement as above-mentioned.

## 2.6. Defect of Organ or Limb

The imām should be disqualified from the post of the imāmate if he suffers from any defect of organ or limb which jeopardises the performance of the duties of the imāmate or contradicts the objective of the imāmate.

Al-Juwaynī does not discuss the circumstance separately or in details but it can be understood from the

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<sup>14</sup> Ibid., p. 120

<sup>15</sup> Ibid., p. 77



discussion on the required qualities related to the organs and limbs<sup>16</sup> and from another statement of his:

"Whatever defect of any organ or limb which has an effect at the beginning [or before the imām is appointed], should also have an effect after the imām has been appointed to the post of the imāmate."<sup>17</sup>

### 3. Circumstances which Require the Dismissal of the Imām

#### 3.1. Fisq (sinfulness)

In relation to the dismissal of the imām, it can be understood that according to al-Juwaynī, there are two types of fisq. Fisq which neither requires disqualification (inkhilā') nor dismissal and fisq which requires dismissal.

Fisq which neither requires disqualification nor dismissal is the fisq which is caused by minor sins or a discontinued great sin and does not cause disorder in his reasoning (khabṭ wa khabl fī al-naẓr).<sup>18</sup>

Fisq which requires dismissal is the fisq which is persistent, causing disorder in reasoning and causing a

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<sup>16</sup> Ibid., p. 78

<sup>17</sup> Ibid., p. 119

<sup>18</sup> Ibid., p. 120

negative effect on the religion and the Muslims.<sup>19</sup>

This division of fisq is according to his writing in al-Ghiyāthī. In al-Irshād, al-Juwaynī divides fisq into three categories - fisq which neither requires disqualification nor dismissal, fisq which requires disqualification and fisq which requires dismissal. In al-Ghiyāthī, as will be explained later, al-Juwaynī rejects the opinion that fisq requires disqualification. However, in al-Irshād, al-Juwaynī admits that this matter is a matter of ijtihād (mujtahadāt).<sup>20</sup>

In al-Ghiyāthī, before giving the details of his opinion on fisq as a requirement for the disqualification and the dismissal of the imām, al-Juwaynī mentions two opinions of different groups of scholars:

Some groups of theologians (usūliyyūn) and jurists (fuqahā') hold the view that fisq requires disqualification. These groups consider the occurrence of fisq during the presence of the imām in the post of the imāmate is similar to that before the contract of the imāmate is made (ya'tabirūn al-dawām bi al-ibtidā'). They argue that if fisq disqualifies a person from the contract

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<sup>19</sup> Ibid., pp. 122 - 123

<sup>20</sup> al-Irshād, p. 425

of the imāmate before the contract is made, it should also disqualify him even after the contract of the imāmate has been made as the reason for the disqualification from the contract of the imāmate is the loss of trust to him and his leadership would lead to a result which contradict the objectives of the imāmate.<sup>21</sup>

Some other groups of scholars hold the view that fisq does not require disqualification of the imām but the imām must be dismissed by ahl al-hall wa al-'aqq.<sup>22</sup> It is understood from his expression in another separate place that what al-Juwaynī means here is dismissal regardless of the different types of fisq.<sup>23</sup>

After mentioning these opinions, al-Juwaynī, then, rejects the opinion that fisq requires disqualification on the grounds that the imām is not an infallible person. It is a common phenomena (zāhir al-kawn) that one who is not infallible is exposed to the matters which may cause fisq. Whereas the quality of continuous piety and obedience, avoiding evil desires, abstaining from prohibition and competing for rewards is an extraordinary quality (al-

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<sup>21</sup> Ibid., p. 100

<sup>22</sup> Ibid., pp. 100 - 101

<sup>23</sup> See Ibid., p 103



badī).<sup>24</sup>

Al-Juwaynī continues saying that if it is a matter of fact that one would not be pious unless one is supported by God's approval; human nature always invites one to follow lust and evil whereas duties always constitute burdening and suffering; the seduction of the satans and evil desires always lead to love of worldly life (al-ʿājil) and quick gain; it is normal that a human being is sometimes swung by desires; the worldly life is seducing and blocking the door of reward. With these natural attributes of human being, mistake and sin may always be committed. Only infallible persons, those protected by the grace of God are safe from committing mistakes and sins. Again, among the duties of the imām is to organize armies (ʿaqd al-alwiyah wa al-bunūd) and to dispatch them. These duties cannot be fulfilled except by one who is brave, powerful, strongheaded and vindictive. How could such a person be safe from possessing the uncouth attitude of a soldier and how could such a person remain in continuous piety? Also among the duties of the imām is to distribute wealth to all the people after collecting it. Due to this fact, al-Juwaynī says, the requirement of the continuous of piety would lead to difficulty in performing the governing

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<sup>24</sup> Ibid., p. 101



duties.<sup>25</sup> Therefore, it is always possible for the imām to commit a mistake or sin whether related to his personal matters or in the matters related to the Muslim affairs such as in contributing wealth, collecting taxes, making laws through his ijtihād, making judgement in court and so on.<sup>26</sup>

Al-Juwaynī says that if fisq requires disqualification, it would involve all his words and actions in all situations: investigation into his fisq would be continuously done; people would be always in conflict in proving and denying his fisq; and therefore, the obedience to the imām would not be stable.<sup>27</sup> If fisq is made a requirement for the disqualification or the dismissal of the imām as an absolute rule (‘alā al-itlāq), the continuation of the objectives of the imāmate would be impossible.<sup>28</sup>

As a conclusion of his reasoning, al-Juwaynī says that making fisq a requirement for the disqualification or the dismissal of the imām from the post of the imāmate as an absolute rule means rejecting the imāmate itself,

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<sup>25</sup> Ibid., pp. 101 - 102

<sup>26</sup> Ibid., p. 103

<sup>27</sup> Ibid., pp. 102 -103

<sup>28</sup> Ibid., p. 103

belittling its importance, uprooting its benefits, disbelieving in it and inciting people to disobey the imām.<sup>29</sup> Disqualifying the imām after stability has been established vitiates against the foundation of authority.<sup>30</sup>

Therefore, according to al-Juwaynī, fisq which occurs when the imām is in the post of the imāmate does not disqualify or does not necessarily require the dismissal of the imām as he says that it is definite that such fisq does not cut off the authority of the imām.<sup>31</sup>

To support the above principle, al-Juwaynī argues that there is no dispute among the scholars that if any new circumstance (ʿard) or illness which prevents the imām from exercising his sound reasoning, occurs to the imām but it is expected to disappear, the imām is not disqualified from the post of the imāmate. Based on this rule, al-Juwaynī says that if illness, which effects his reasoning, does not disqualify the imām from the post of the imāmate, it is more appropriate to say that fisq which does not effect his reasoning should not disqualify him as its disappearance is more likely and possible.<sup>32</sup>

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid., p. 105

<sup>31</sup> Ibid., pp. 103 - 104

<sup>32</sup> Ibid., p. 104

Al-Juwaynī also says that there are many reports (akhbār) transmitted from the Prophet Muḥammad which support this principle. Among others, al-Juwaynī mentions:

"Are you leaving my amīrs to me? You only enjoy happiness and leave grief to them"<sup>33</sup>

### 3.2. Imprisonment in War

If the imām is imprisoned in war and his release is expected to be impossible for the Muslims, his deposal from his post of the imāmate must be through dismissal.<sup>34</sup>

Al-Juwaynī says that it is not permissible (lā sabīl) to leave the country without the imām and the presence of the imām who is imprisoned in war is meaningless as he is unable to fulfil the duties of the imām.<sup>35</sup> His authority over the country is cut off.<sup>36</sup> In this case, another imām should be appointed.<sup>37</sup>

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<sup>33</sup> Muslim (al-Ghyāthī(1), p. 105)

<sup>34</sup> al-Ghiyāthī(1), p.116, p.117 and p. 119

<sup>35</sup> Ibid., p. 119

<sup>36</sup> Ibid.

<sup>37</sup> Ibid., Regarding the dismissal of the imām by imprisonment in a war, <sup>c</sup>Abd al-<sup>c</sup>Azīm al-Dīb suggests that it is a possible hint by al-Juwaynī for Nizām al-Mulk to depose the Abbasid Caliph in Baghdād. (See al-Ghiyāthī(2), pp. 103 mīm - 107 mīm)



Imprisonment in war does not require disqualification (in'izāl) of the imām during his tenancy of the post of the imāmate because his release, although it is expected to be impossible for the Muslims, it is still possible for those who imprisoned him to have choice of releasing him.<sup>38</sup> Therefore, the imām remains as the imām until he is dismissed by ahl al-hall wa al-'aqq.<sup>39</sup> On this rule, al-Juwaynī says that what requires disqualification is an obvious cause (sabab zāhir), whose removal is expected to be impossible and whose removal does not depend on the choice of any one (ikhtiyār mukhtār wa ithār mu'thir).<sup>40</sup> In the case of the imprisonment of the imām in a war, even though the first two conditions are fulfilled, the imām should not be disqualified.

### 3.3. Loss of Obedience (Suqūt al-Tā'ah)

If the obedience from the people to the imām is lost and as a result, his power becomes weak, the imām should be dismissed.<sup>41</sup>

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<sup>38</sup> Ibid., p. 123

<sup>39</sup> Ibid.

<sup>40</sup> Ibid., p. 124

<sup>41</sup> Ibid., pp. 116 - 117, p. 119, p. 123 and p. 124, The imposition of loss of obedience from the people to the imām as a reason for the dismissal of the imām is another possible hint by al-Juwaynī for Nizām al-Mulk to depose the powerless Abbasid Caliph in Baghdad, as suggested by 'Abd al-'Azīm al-Dīb. See footnote no. 37 of the same chapter.



Loss of obedience by the people to the imām may occur due to many factors. Among others, natural dislike or boredom by the people which is caused by the length of the period of the imām's tenancy in the post of the imāmate. It may occur although there is no defect in the soundness of mind, character, behaviour or nobility of the imām.<sup>42</sup>

When the loss of obedience occurs, the relationship between the people and the imām broken down. Therefore, he should be dismissed and another imām whom the people would obey should be appointed.<sup>43</sup>

According to al-Juwaynī, loss of obedience from the people to the imām does not require disqualification.<sup>44</sup> It is understood that the reason for this rule is similar to that for the imprisonment in war. The disappearance of the loss of obedience from people depends on the choice of the people. Therefore, the third condition for disqualification from the post of the imāmate is not fulfilled.

Regarding the loss of obedience to the imām by the people and probably due to that reason that he writes the

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<sup>42</sup> Ibid., pp. 116 - 117

<sup>43</sup> Ibid., p. 117

<sup>44</sup> Ibid.

book to refute the opinion of the adversaries of the Sunnites, in al-Ghiyāthī, al-Juwaynī defends the fact that the obedience by the people to the Caliph 'Uthmān was not lost when he was confined (huṣira) in a house before he was murdered. Al-Juwaynī argues that the confinement of the Caliph 'Uthmān was not similar to imprisonment in war as he was confined only by a small group of people. Therefore, his release was expected to be possible. 'Uthmān chose to be confined because he was reluctant to be involved in bloodshed. One of the grounds which supports this fact is his saying to his slaves (ghulmāniḥ) when he was in confinement:

"Whoever throws away his weapon, is freed [from his slavery]." <sup>45</sup>

#### 3.4. Chronic Illness (marḍah muzminah)

If the imām suffers from a chronic illness which causes obvious defect in reasoning (ikhtilāl bayyin wāḍiḥ wa kharm fī ra'y lā'ih), he should be dismissed.<sup>46</sup>

Al-Juwaynī does not explain the reason for this requirement for dismissal but it can be understood that recovery from a chronic illness is always possible.

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<sup>45</sup> Ibid., pp. 124 - 125

<sup>46</sup> Ibid., p. 120

However, uncertainty of the time when he would recover needs a decision as to whether to allow him to stay in the post of the imāmate or to depose him from it. Therefore, his dismissal can be established.

#### 4. Dismissal of the Imām

##### 4.1. Time of the Dismissal of the Imām

If the dismissal or resignation of the imām should occur, the dismissal or the resignation must be made prior to the appointment of the new imām or his successor.<sup>47</sup>

Although al-Juwaynī does not give any reason for this rule, it can be understood that if the appointment of the new imām is made prior to any dismissal or resignation, it would certainly contradict the prohibition of appointing two imāms concurrently as there would be a period between the appointment of the new imām and the dismissal or resignation of the existing imām when two imāms exist in the post.

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<sup>47</sup> Ibid., p. 126

## 4.2. Methods of the Dismissal of the Imām

There are two methods of how the imām can be dismissed. The dismissal by ahl al-hall wa al-‘aqd and self-dismissal by the imām or resignation.

### 4.2.1. Dismissal by Ahl al-Hall wa al-‘Aqd

As afore-mentioned, when the imām is appointed, neither ahl al-hall wa al-‘aqd or any Muslim has the right to dismiss the imām without any legal reason as long as the imām fulfils his duties according to the law of Islām, nor has the imām himself the right to resign from the post of the imāmate except in certain circumstances.

If any circumstance which requires dismissal occurs, the one who has the right to dismiss him is the one who appoints the imām i.e. in the ordinary case it is ahl al-hall wa al-‘aqd.<sup>48</sup>

In the case of the imām being dismissed by ahl al-hall wa al-‘aqd, unanimity (ijmā‘) is not required. The reason is that if the agreement of the scholars is required, disorder in the country would expand while waiting for the

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<sup>48</sup> Ibid., p. 126



agreement.<sup>49</sup>

It is also a principle that as in the appointment of the imām, the condition of the possession of power by ahl al-hall wa al-‘aqd must be taken into account.<sup>50</sup>

It is understood that, according to al-Juwaynī, the same principle is applicable in the case of the appointment by preceding imām. If any circumstance which requires dismissal occurs to the walī al-‘ahd, the appointing imām is the one who has the right to dismiss his walī al-‘ahd.<sup>51</sup>

#### 4.2.2. Abdication

Regarding self-dismissal by the imām or abdication from the post of the imāmate, al-Juwaynī has developed his thought. In al-Irshād, he says that abdication by the imām is possible (muhtamil).<sup>52</sup> It is understood that this rule is absolute because he does not mention the various circumstances which he mentions in al-Ghiyāthī. In al-Ghiyāthī, before he gives his own opinion, al-Juwaynī presents two different opinions of scholars.

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<sup>49</sup> Ibid., pp. 126 -127

<sup>50</sup> Ibid., p. 127

<sup>51</sup> Ibid., p. 143

<sup>52</sup> al-Irshād, p. 426

Some scholars hold the view that abdication by the imām from the post of the imāmate is prohibited on the grounds that the contract of the imāmate is binding on both parties of the contract.<sup>53</sup>

Some other scholars hold the view that abdication is permissible based on a continuously transmitted report that al-Ḥasan b. ʿAlī abdicated from his wilāyat al-ʿahd and no one appeared to oppose the abdication.<sup>54</sup>

Between these two opinions, al-Juwaynī builds his own opinion. His opinion is not definite on either of the two opinions. According to al-Juwaynī the prohibition or the permissibility depends on the situation or the effect of the abdication.

If the imām knows that his abdication would lead to chaos in the country, his abdication is prohibited. He based his opinion on the rule of the sharīʿah that if a soldier (al-wāqif) in a battle against polytheists (mushrikīn) knows that his withdrawal from the battle would cause defect to the defence of the Muslims side, he must stay in the battle although his involvement in the battle is not a personal duty due to the involvement of other

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<sup>53</sup> Ibid., p. 128

<sup>54</sup> al-Ghiyāth(1), p. 129, al-Irshād, p. 426

capable persons (al-kuffāh).<sup>55</sup>

If he knows that his abdication gives benefit to the Muslims, for instance, that his abdication can extinguish enmity, can eliminate fighting, can avoid bloodshed or can release the Muslims from hardship, his abdication is permissible.

To support this principle, al-Juwaynī says that the abdication of al-Ḥasan b. ʿAlī was due to this reason. In al-Irshād, al-Juwaynī says that al-Ḥasan abdicated because he felt that he is incapable (ʿajz) of continuing with his wilāyat al-ʿahd.<sup>56</sup>

The saying of the Prophet Muḥammad about al-Ḥasan:

"This son of mine is a master (sayyid) and with him, God, the Most Exalted, will reconcile between the groups"<sup>57</sup>

indicates that the abdication of al-Ḥasan was for the benefit of the Muslims. Therefore, it is permissible.

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<sup>55</sup> Ibid., p. 129

<sup>56</sup> al-Irshād, p. 426, However, some writers reported that Ḥasan's abdication was due to the condition of receiving a certain amount of money from Muʿāwiyah (See Jafri, S.H.M., Origins and Early Development of Shīʿa Islam, London, 1978, p. 140, citing Ṭabarī, ii, pp. 1, 5 ff.

<sup>57</sup> Bukhārī (al-Ghiyāthī(1), p. 130)



However, the abdication can not be made without any acceptable reason as the imām wishes.<sup>58</sup> The conversation between Abū Bakr and the people supports this principle as Abū Bakr says:

"Dismiss me [from the post of the imāmate] because I am not the best person among you."

and the people responded:

"In the name of God, we would neither dismiss you nor would we ask you to be dismissed."<sup>59</sup>

If the imām knows that his abdication neither harms nor benefits the Muslims and the post of the imāmate can be replaced by another imām without any difficulty, al-Juwaynī has no definite opinion between prohibition and permissibility. The matter, as he says, is not definite and is open to ijtihād.<sup>60</sup> However, he says that what is clear to him is that in such a situation, if he intends to seclude himself to worship God, his abdication should not be prohibited.<sup>61</sup>

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<sup>58</sup> al-Irshād, p. 426

<sup>59</sup> Ibid., Bukhārī (al-Ghiyāthī(1), p. 130)

<sup>60</sup> Ibid., p. 131

<sup>61</sup> Ibid.



## 5. Remedies for the Refusal of the Disqualified or Dismissed Imam to Step Down

If the disqualified or dismissed imam refuses to step down from the post of the imāmate and still holds the post with power and equipment, al-Juwaynī says that steps to overcome this situation must be taken. The continuation of such an imām in power would lead to a result which is contradictory to the objectives of the imāmate. On the dismissal of the imām which is due to fisq, al-Juwaynī says:

"Leaving people in chaos without a leader is better than to be led by a leader who supports evil, transgression and heresy."<sup>62</sup>

It is understood that this principle also applies to the imām who is disqualified or dismissed due to other reasons.

If the appointment of a new imām who is qualified for the imāmate is possible (tayassara), the new imām must be appointed. When the contract of the imāmate is made and the obedience has been established, the new imām replaces the disqualified or the dismissed imām.<sup>63</sup>

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<sup>62</sup> Ibid., p. 106

<sup>63</sup> Ibid., p. 109

When the new imām is appointed, the first duty of the imām is to prevent the disqualified or the dismissed imām from continuing in carrying out the duties of the imāmate. If he disobeys, he should be treated as a rebel (bāghī singular of bughāh). In this case, all rules (ahkām) relating to rebels in the law of Islām should be followed.

If the Muslims know that the appointment of the new imām would cause disaster, bloodshed and destruction of properties, the principle is to measure between the advantages and disadvantages for the Muslims. If the advantages are more than the disadvantages, the new imām should be appointed. If otherwise, the appointment of the new imām is not obligatory until the situation changes.<sup>64</sup> In this case, based on other rules of the sharī'ah such as enjoining good and forbidding evil (al-amr bi al-ma'rūf wa al-nahy 'an al-munkar), it is understood that every individual Muslim who is a legally capable (mukallaf) is responsible for giving effort to change the situation until the appointment of the new imām becomes possible.

Al-Juwaynī bases this argument on the permission of the Muslims to have an agreement of peace with unbelievers (muhādanat al-kuffār) for ten years if the Muslims feel

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<sup>64</sup> Ibid., pp. 106 - 110

that they are weak to fight the unbelievers.<sup>65</sup> Al-Juwaynī also bases his argument on the following legal principles:

1. Seek for the interest (talab al-maslahah)<sup>66</sup>
2. Seek for the better benefit (irtiyād al-anfā')<sup>67</sup>
3. Choose the lesser of two evils (i'timād khayr al-sharrayn)<sup>68</sup>

Al-Juwaynī supports this principle by referring to the case of arbitration in the conflict between 'Alī and Mu'āwiyah. He says that when 'Alī accepted the arbitration (tahkīm) with Mu'āwiyah for his dismissal from the post of the imāmate, it was due to the fact that 'Alī realized that the negative effect from their conflict to the Muslims had become worse.<sup>69</sup> It is understood that what al-Juwaynī means is that 'Alī did so to avoid worse future negative effect to the Muslims. In other words, he implemented the above-mentioned legal principles.

If there is no person qualified for the imāmate, but there is a person who has followers and he is obeyed by the

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<sup>65</sup> Ibid., p. 111

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid., pp. 114 - 115

people, and he rises, he should be appointed as the imām to fulfil the needs of the Muslims and his appointment should be approved by the Muslims.<sup>70</sup>

In the case if the Muslims do not have any legitimate imām, at any period, all their affairs should be entrusted to the scholars.<sup>71</sup>

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<sup>70</sup> Ibid., p. 116

<sup>71</sup> Ibid., p. 391



## CHAPTER FOUR

### THE DUTIES OF THE IMĀM

Before elaborating the duties of the imām, al-Juwaynī precedes with a rather long introduction explaining the responsibilities and the nature of human beings, the problems arising from their nature, the justification for God imposing His laws, the justification for the necessity of having an imām with power.

Al-Juwaynī explains that all human beings are required by the law of Islām (sharʿ) to uphold the religion, to be pious, to observe what may make one close to God, to occupy oneself with seeking the pleasure of God, to glorify Him, to be pleased in this world with the duty to convey the message of God and to refrain oneself from evil desires.<sup>1</sup>

Beside these responsibilities, God also creates desires and lust in human beings. In achieving what they desire, they are given rules making things permissible and prohibited which should be observed, and providing methods to apply the rules (tahdhīb masālik al-ahkām) to the people. With these rules, worldly affairs would be in

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<sup>1</sup> al-Ghiyāthī(1), p. 180

order.<sup>2</sup>

These created desires may lead human beings to competition and disputes among themselves. Although God has made the rules that transgressing what has been forbidden would lead to punishment and observing the command would lead to reward, not all human beings conform to the rules.<sup>3</sup>

To solve the transgression which may be committed by those who do not conform to the Laws of God, God makes the establishment of an imāmate compulsory in order to conduct the religious and worldly affairs by preventing such a transgression, fulfilling the rights of the people, eliminating (yakuffu) the extremists, supporting the moderates (muqtasidīn), setting up the foundation of righteousness (mabānī al-rashād) and stopping the means of misleading and corruption.<sup>4</sup>

Due to this reason, when God sent Messengers to this world, He supports them with power (sultān). Among these Messengers are Dāūd, Mūsā and Sulaymān. Muḥammad was supported by manifest evidences and was strengthened with

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<sup>2</sup> Ibid., pp. 180 - 181

<sup>3</sup> Ibid., pp. 181 - 182

<sup>4</sup> Ibid., pp. 182 - 183

the sword.<sup>5</sup>

After this introduction, al-Juwaynī continues with the elaboration of the duties of the imām.

## 1. Types of the Duties of the Imām

Al-Juwaynī divides the duties of the imam into two categories - duties which are related to religious affairs and duties which are related to worldly affairs. It is worth mentioning here that the duties which are related to worldly affairs are subordinate to the duties which are related to religious affairs.<sup>6</sup>

### 1.1. Duties Which are Related to Religious Affairs

Al-Juwaynī divides the duties which are related to religious affairs into two categories - duties which are related to the foundation of the religion or faith (asī al-dīn) and duties which are related to the branches (furūʿ) of the religion or laws.

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<sup>5</sup> Ibid., p. 182

<sup>6</sup> Ibid., p. 187

### 1.1.1. Duties Which are Related to the Foundation of the Religion or Faith

The duties which are related to the foundation of the religion or faith are divided into two categories - protecting the religion and calling non-Muslims to Islām.

#### 1.1.1.1. Protecting the Religion

As to the duty to protect the religion, from al-Juwaynī's writing in al-Ghiyāthī, it could be summarized that the protection of the religion should be carried out by the imām by fighting against bid'ah (innovation) and heresy, by preparing missionaries (du'āh) to call people to the true path, by abstaining from interfering in the conflicts of opinions which occur among Muslim jurists (fugahā') and by educating the people to follow the tradition of the early pious scholars (salaf al-sāliḥīn) and to avoid difficult matters.

##### 1.1.1.1.1. Fighting against Bid'ah and Heresy

It is the duty of the imām to keep the religion pure and safe from any corruption through bid'ah and heretic opinions. The imām should protect the religion extensively by himself and his assistants. Regarding this duty, al-Juwaynī says that preventing before happening is easier



than eliminating it after it has happened.<sup>7</sup>

The following are the methods for keeping the religion pure and safe from bid'ah and heresy:

(a) In the Case of the Problem Being within Control of the Imām

If the deviationist (zā'iqh) commits apostasy, the imām should ask the person to repent. If he refuses to repent, the imām should execute him by cutting off his head.<sup>8</sup>

If the heretic group who are called to the true path by the imām give a guarantee to the imām not to spread (yazharū) their bid'ah but the imām knows that they would spread their heretic opinions secretly, the imām should take steps to overcome the problem. The first step is that the imām should warn them. If they ignore the warning and carry on with their call, the imām should take the second step - asking them to appear and imposing ta'zīr punishment on them. If they still refuse to stop their activities and gather (tajamma'ū) to withdraw their obedience from the imām, the third step should be taken by the imām - fighting

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<sup>7</sup> Ibid., p. 184

<sup>8</sup> Ibid., pp. 184 - 185

against them.<sup>9</sup>

If the innovation created does not constitute apostacy, the imām must give maximum effort to prevent the person who creates the bid'ah from his innovation on the grounds that if such a person is left with his bid'ah and his missionary activity (da'wah), it would damage the faith of other people and would cause hardship and dissension. If the bid'ah has become deep-rooted in the hearts of the people, it would lead to danger and later would uproot the foundation of Islām.<sup>10</sup>

If the deviating views and false claims have accumulated, continued and become extensive (ishtadda) but still can be prevented, the imām should prevent them. Besides, the imām should consider the duty to prevent such deviating views and false claims as his highest priority among his duties.<sup>11</sup> The reason for this principle is that although the imām has both duties - to protect the faith of Islām and to protect the worldly interests of the Muslims, the protection of the worldly interests of the Muslims is subordinate (tābi') to the protection of the faith. The protection of the faith is the purpose of having the imām.

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<sup>9</sup> Ibid., p. 215

<sup>10</sup> Ibid., p. 185 and p. 215

<sup>11</sup> Ibid., p. 186

Therefore, between these two duties, the duty to protect the faith should be given preference to the duty to protect the worldly interests of the Muslims.<sup>12</sup>

(b) In the Case of the Problem Being beyond the  
Control of the Imām

In the case when the problem of bid'ah and heresy have become extensive and difficult for the imām to fight against ahl al-bida' (innovators) and heretics, and the imām thinks that having peace with them and leaving them with their opinions and claims is better for the interests of the Muslims than taking open action against them, he may do so. The reason for this principle is that open action would provoke them to fight against and disobey the imām, and to ignore the security of the country. This would lead to the suspension of security supervision at the frontiers and would seduce non-Muslims to attack the Islamic territory. If the imām decides to have peace with ahl al-bida' and the heretics, while having peace with them, the imām should also take other steps to subdue them - by observing their activities, arguing with them incisively, uprooting their leaders, reducing their numbers, scattering them into different areas and cutting off assistance to them as much as possible. When the group are weak, the imām should

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<sup>12</sup> Ibid., pp. 186 - 187 and p. 152



attack them. This strategy can be followed if they still obey the imam.<sup>13</sup>

If their bid'ah and heresy reaches the level of withdrawal from their obedience to the imām, the imām should treat them as rebels.<sup>14</sup> This principle, according to al-Juwaynī, is agreed upon by all groups of Muslims.<sup>15</sup>

Regarding the duty of the imām to fight against the innovation, al-Juwaynī says that it is among the most important duties of the imām.<sup>16</sup>

Other than the duty to fight against ahl al-bida' the imām should also be responsible to ascertain that the laws of the country are complied with by all the people. If there is a group of Muslims who refuse to comply with any rule even that which is made through the ijtihad of the imām, the imām should fight against them. Al-Juwaynī bases this principle on the practice of Abū Bakr fighting against those who refused to pay zakāt during his time.<sup>17</sup>

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<sup>13</sup> Ibid., pp. 187 - 188

<sup>14</sup> Ibid., p. 189 and p. 215

<sup>15</sup> Ibid., p. 215

<sup>16</sup> Ibid., p. 195

<sup>17</sup> Ibid., p. 216



#### 1.1.1.1.2 Abstaining from Interfering in the Conflict of Opinion among the Muslim Jurists

It is also the duty of the imām not to interfere in the conflict of opinions regarding the matters of ijtihād among the jurists who are contemporary with him.<sup>18</sup> However, the imām should not prevent the jurists from exercising their ijtihād. The imām should acknowledge (yaqirru) every single scholar (imām), his followers and their views.<sup>19</sup>

It is understood from al-Juwaynī's writing that disagreement among the Muslim jurists regarding the matters of ijtihād is a grace and blessing from God, not a negative matter. To support his view, al-Juwaynī says that such a disagreement of opinion had also occurred during the time of the early pious scholars (salaf al-sālihīn) and the Companions of the Prophet and the reason for the disagreement was due to their research for the evidence (adillah) of the sharī'ah.<sup>20</sup>

Al-Juwaynī supports his view by providing a hadīth:

"The conflict [of opinion] between [the members]

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<sup>18</sup> Ibid., pp. 189 - 190

<sup>19</sup> Ibid., p. 190

<sup>20</sup> Ibid., p. 189

of my ummah (people) is a blessing"<sup>21</sup>

Probably, the reason for saying that the disagreement of opinions is a grace and blessing from God is that people are given freedom of reseaching, thinking and expressing.

1.1.1.1.3. Guiding the Public to Follow the Tradition  
of the Early Pious Scholars and to Avoid  
Difficult Matters

Another way to protect the religion which should be carried out by the imām is to guide the public to follow the opinions of the early pious scholars before deviation in their opinion occurs. He should guide the people to avoid being involved in difficult matters and creating answers for presumed questions about cases which have not yet happened. This duty is based on the practice of the Companions of the Prophet preventing the people from doing so during their time. Instead they devoted their attention to seeking goodness and piety, preventing harm (kaff al-adhā) and paying obedience to God as much as possible.<sup>22</sup> They not only abstained themselves from being involved in such activities but were also firmly against any one who

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<sup>21</sup> Ibid., p. 189, Ahmad (al-Irshād, p. 427)

<sup>22</sup> Ibid., pp. 190 - 191

tried to be involved in them."<sup>23</sup> Although they were the most intelligent individuals, they believed that involving themselves in such activities would cause disaster and errors (al-dalālāt) plural for al-dalāl).<sup>24</sup>

Besides, it is reported from the Prophet, when the Prophet said:

"My ummah will break up into seventy three groups and only one of them will be safe",

the audience asked about which group would be the safe one. The Prophet answered:

"Those who follow the way which is followed by myself and my Companions".<sup>25</sup>

Regarding this duty, al-Juwaynī says that the imām should consider this duty his most important one as the imām is the final reference for any argument and a caller (mudda'ī, singular of mudda'āh) to righteousness.<sup>26</sup>

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<sup>23</sup> Ibid., p. 191 and p. 192

<sup>24</sup> Ibid., p. 191

<sup>25</sup> Ibid., p. 191, Abū Dā'ūd, Ibn Mājah, al-Tirmizī (al-Ghiyāthī(2), p. 141)

<sup>26</sup> al-Ghiyāthī(1), p 192

#### 1.1.1.1.4. Sending Missionaries to the People to Explain the truth

If the disaster of the bid'ah has filled up the hearts of the people and the callers to bid'ah have spread throughout the country, it is the duty of the imām to send missionaries to them to remove the confusion which is caused by them with proof and evidence, to destroy the opinion of the heretics and to explain the truth to the people.<sup>27</sup>

Regarding this duty, al-Juwaynī says that the circumstance which he mentions here is the one which has been happening during his time.<sup>28</sup>

#### 1.1.1.2. Calling Non-Muslims to Islām

Another duty of the imām which is related to faith is to call non-Muslims to Islām. In performing this duty, there are two methods which should be followed by the imām:

##### 1.1.1.2.1. By Discussion

The first method is by having discussion (ḥidāḥ) with

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<sup>27</sup> Ibid., pp. 192 - 193

<sup>28</sup> Ibid., p. 193



the non-Muslims in the best manner and by using evidences and reasons in explaining the true path.<sup>29</sup>

To carry out the duty by this method, the imām should choose Muslim scholars who are competent in debating to conduct the discussion (jidāl) on his behalf. The person, then, should be intelligent, learned, possess a high standard of language and personality, and be kind, friendly, compassionate, sympathetic, merciful and gracious<sup>30</sup> because the reason for having discussions is to eliminate confusion and to call the non-Muslims to the true path with the clearest evidences.<sup>31</sup>

#### 1.1.1.2.2. By Jihād

If the first method is not effective, then the imām should use force and weapons to invite them to Islām. However, the second method should come after the first one. In other words, the imām should carry out the first method first, then if he fails, he should use the second method.<sup>32</sup>

According to al-Juwaynī, jihād is entrusted to the

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<sup>29</sup> Ibid., pp. 195 - 196 and p. 207

<sup>30</sup> Ibid., p. 196

<sup>31</sup> Ibid., p. 207

<sup>32</sup> Ibid., pp. 195 - 196 and p. 207

imām. It is a personal duty (fard 'ayn) of the imām like the duty to perform prayer (ṣalāh). The reason for this rule is that the imām is the one who conducts all the affairs of the Muslims. In term of responsibility, the imām alone is equal to all Muslims. He is the representative (nā'ib) of all Muslims in arranging armies and dispatching them. Therefore, he should give his maximum effort in performing his duties.<sup>33</sup>

As the duty to perform jihād is entrusted to the imām and it is also his personal duty, no individuals or people who possess power (dhawī al-ba's wa al-naǧdah) among the Muslims should go to jihād by themselves without obtaining any command or permission from the imām or the authority (ṣāhib al-amr).<sup>34</sup>

Jihād should be carried out at any time whenever possible and whenever the opportunity (fursah) is available. If the imām feels that the Muslims are weak, it is permissible for him to have a peace agreement (yuhāḍin) with the unbelievers for ten years.<sup>35</sup>

Al-Juwaynī rejects the opinion of some groups of

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<sup>33</sup> Ibid., p. 210

<sup>34</sup> Ibid., p. 209

<sup>35</sup> Ibid., p. 208

jurists that jihād is among the public duties (fard kifāyah) of every Muslim, including the imām. According to these jurists, if any one of the Muslims has performed it, the duty is dropped from the others. If no one performs it, every single Muslim would be sinful.<sup>36</sup> He rejects this opinion because as mentioned earlier, according to him, the duty of jihād is not a public duty of the imām.

Al-Juwaynī also rejects the opinion of these groups of jurists that jihād must be performed at least once a year.<sup>37</sup> The reason for his rejection is clear as aforementioned as al-Juwaynī says that jihād should be carried out at any time and whenever the opportunity comes.

#### 1.1.2. Duties which are Related to the Branches of the Religion

What is meant by the duties which are related to the branches of the religion here is the duties which are related to the acts of worship (al-ʿibādāt al-badaniyyah).<sup>38</sup>

As regard to the acts of worship, al-Juwaynī says that the validity of them does not have any relation to the

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<sup>36</sup> Ibid., p. 207

<sup>37</sup> Ibid., p. 208

<sup>38</sup> Ibid., p. 197



jurisdiction (nazr) of the imām. Therefore, the worship is valid as long as all conditions and essential elements (arkān) are fulfilled and is performed within the specified period. Al-Juwaynī also says that those who hold the view that the validity of a Friday prayer (ṣalāt al-jumʿah) depends on the permission of the imām are wrong.<sup>39</sup>

However, the imam is still responsible for looking after the security of the people who perform the acts of worship and to implement the rules relating to the acts of worship in case of there being any transgression by the people.<sup>40</sup>

The nature of the duties of the imām, however is different depending on the nature of the types of the acts of worship.

Al-Juwaynī divides the acts of worship into two categories - the acts of worship which constitute public ceremony (shīʿār zāhir) and the acts of worship which do not constitute public ceremony.

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<sup>39</sup> Ibid., p. 198

<sup>40</sup> Ibid., p. 199



#### 1.1.2.1. The Acts of Worship which Constitute Public Ceremony

The Acts of worship which constitute public ceremony again are divided into two categories - the acts of worship which involve gathering of a great number of people such as Friday prayers, festivals ('a'yād) and pilgrimage and the acts of worship which do not involve a great number of people such as calling to prayers (ādhān and iqāmah).<sup>41</sup>

##### 1.1.2.1.1. Supervising the Acts of Worship which Constitute Public Ceremony and Involve A Great Number of People

As far as the acts of worship which constitute public ceremony and involves a great number of people are concerned, the imām is responsible to supervise the people to prevent them from committing prohibited things and to protect them from any disturbance by evil people who possess power. This principle is based on the tradition of the Prophet who commanded Abū Bakr to supervise those who go on the pilgrimage after the conquest of Makkah. This tradition was practised every year later on. Since then, the pilgrimage has never been performed without the supervision of the imām or his assistant (mustanāb). Based

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<sup>41</sup> Ibid., pp. 198 - 199

on this tradition, the caliph Abū Bakr appointed (ṣaddara) group leaders (mayāsīr al-'umarā' wa dhawī al-alwiyah) to organize gatherings. Through these leaders, at least, people would be united and protected from dissension and disorder.<sup>42</sup>

1.1.2.1.2. Supervising the Acts of Worship Which  
Constitute Public Ceremony and Do not  
Involve A Great Number of People

As for the acts of worship which constitute public ceremony but do not involve a great number of people such as calling to prayers (ādhān and iqāmah), the imām should interfere if the ceremony is not performed, for example, by a certain group in a certain region. The interference should be carried out by commanding (haml) them to perform it. In the case if they refuse to obey his command, al-Juwaynī provides two opinions of scholars. Some scholars permit the imām to force them to perform it by weapons and another group of scholars do not permit that. Al-Juwaynī himself does not show any inclination towards any of the two opinions. He only says that the issue is an issue of ijtihād.<sup>43</sup>

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<sup>42</sup> Ibid., p. 199

<sup>43</sup> Ibid., p. 200

#### 1.1.2.2. Supervising the Acts of Worship which Do Not Constitute Public Ceremony

Regarding the acts of worship which do not constitute public ceremony, the imām does not have any active duty towards them. The imām has only passive duty. The imām should not interfere in this type of worship except if a transgression which is related to the obligation is reported to him. For example, If it is reported to him that somebody intentionally does not perform regular prayers without any valid excuse and refuses to make them up (qadā'), the imām should interfere by imposing punishment on the person. In this case, al-Juwaynī says that according to the opinion of al-Shāfi'ī, the punishment for such an offence should be execution and according to other scholars, the punishment should be a torture (ta'zīb) and confinement (ḥabs).<sup>44</sup>

#### 1.2. Duties Which are Related to Worldly Affairs

Al-Juwaynī divides the duties which are related to worldly affairs (ahkām al-dunyā) into two types - seeking what has not yet been obtained and protecting what has been obtained.<sup>45</sup>

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<sup>44</sup> Ibid., p. 200

<sup>45</sup> Ibid., p. 201



### 1.2.1. Seeking What Has Not Yet Been Obtained

Al-Juwaynī does not elaborate what he means by seeking what has not yet been obtained. Probably what he means is that to struggle to gain more territories and expand Islām to non-Islamic territory. The reason for saying that is that al-Juwaynī mentions the method of how to carry out this duty i.e. by jihād and fighting against the unbelievers (ahl al-kufr).<sup>46</sup>

### 1.2.2. Protecting What Has Been Obtained

Al-Juwaynī divides again the duty of the imām to protect what has been obtained into two types - protecting from external enemy i.e. the unbelievers and protecting from internal evil people (ahl al-tawāthub wa al-taqhālub wa al-taqāṭuʿ wa al-tadābur wa al-tawāṣul).<sup>47</sup> Al-Juwaynī does not define the meaning of "what has been obtained". Probably what he means is private property.

#### 1.2.2.1. Protecting From External Enemy

The method which should be followed by the imām in protecting what has been obtained from the external enemy

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<sup>46</sup> Ibid.

<sup>47</sup> Ibid.



i.e. unbelievers is by preparing frontier posts (al-thughūr) and locating adequate soldiers in observation posts (al-marāṣid) to observe the enemy outside the territory. Besides, they also should be provided with sufficient food, water, weapon, ammunition (al-ʿitād) and other necessary equipments for defence.<sup>48</sup>

#### 1.2.2.2. Protecting From Internal Evil People

As to the protection of what has been obtained from the internal evil people, al-Juwaynī divides this duty into two types - the duty which is related to general interests (marātib al-kulliyyāt) and the duty which is related to individual matters (juzʿiyyāt).

##### 1.2.2.2.1. Duty of Protection from Internal Evil People which is Related to General Interests

As to the duty of protection from internal evil people which is related to general interests, al-Juwaynī says that it is the duty of the imām to ascertain that people enjoy security in the Islamic territory. Therefore, steps should be taken to keep the Islamic territory safe from any threat and disturbance from any evil people such as highway

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<sup>48</sup> Ibid., p. 201 and pp. 211 - 212

robbers. In performing this duty, the imām should appoint assistants from people who possess capacity (yastaqill bi kifāyah) and send them to different regions.<sup>49</sup>

#### 1.2.2.2.2. Duty of Protection from Internal Evil People which is Related to Individual Matters

As to the duty to protect what has been obtained from Internal evil people which is related to individual matters, al-Juwaynī divides it into three types - adjudication between people in conflict, implementing policies on the people and punishment of hudūd and ta'zīr on the offenders, and supervising person who are exposed to destruction and fulfilling the needs of those in need.

##### 1.2.2.2.2.1. Adjudicating between People in Conflict

One of the duties in protecting what has been obtained which are related to individual matters is to adjudicate between individuals in conflict (khusūmah, munāza'ah, singular for khusūmāt, munāza'āt). This duty should be carried out by the judges whose power is delegated by the imām. The judges are the assistants of the imām to carry out this duty.<sup>50</sup>

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<sup>49</sup> Ibid., p. 203, See also pp. 212 -213

<sup>50</sup> Ibid., p. 202, See also p. 213

Conflict between individuals is considered as an individual matter because it comes from individuals (al-āhād wa al-afrād). He excludes highway robbery and the like from individual matters because it usually involve a number of people and come under the heading of general interest.<sup>51</sup>

#### 1.2.2.2.2. Implementing Policies (Ṣiyāsāt) and Punishment

The second duty in protecting what has been obtained which is related to private matters is to implement policies on the people and to impose punishment on the offenders to prevent people from committing abominations (al-fawāsid) and great sins (al-mūbiqāt).<sup>52</sup>

Al-Juwaynī divides the method of preventing people from committing abominations and great sins into three types - by fighting (qitāl), by imposing punishment and by giving warning (nakāl).

The prevention by fighting is applicable to rebels (ahl al-baḡhi), highway robbers (qattā' al-tarīq), those who have taken up position to commit highway robbery (al-rāsidīn li al-tarīqīn) and those who carry weapons [to commit robbery]

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<sup>51</sup> Ibid.

<sup>52</sup> Ibid., p. 203



(al-mujāhidin bi haml al-silāh). As for the rebels, if their rebellion justified, the imām should investigate their claim and should overcome the suffering they are undergoing and then forgive them. If they deviate from the true path, the imām should correct them. If they refuse to obey, the imām should fight against them.<sup>53</sup>

As to the highway robbers, al-Juwaynī says that those who refuse to obey the laws (ahkām) but do not use force (man'ah wa shawkah), should be forced to obey them. If they use force, they should also be called to obey the laws. If they refuse to obey the call, the imām should fight against them with force to break up their opposition.<sup>54</sup>

As to the punishment of which the implementation is entrusted to the imām on individuals, it is divided into two categories - hadd (fixed) punishment) and ta'zīr (preventive) punishment. Qisās punishment (punishment for the offences against the body) is entrusted to the kin of the victim. Although qisās punishment is a pure right of human being (ādami), it should not be implemented without the supervision of the authority (sultān).<sup>55</sup>

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<sup>53</sup> Ibid., pp. 214 - 215

<sup>54</sup> Ibid., p. 215

<sup>55</sup> Ibid., p. 217



As to ta'zīr punishment, which is different from hadd punishment, some of these punishments are only pure right of man (ādami) because such punishments may be dropped by one who has the right to execute them and others are only the pure right of God.<sup>56</sup>

The ta'zīr punishment is not required (lā yatahattam) to be imposed like the hadd punishment. The hadd punishment must be imposed whenever its crime is proven. Whereas the imposition of the ta'zīr punishment depends on the discretion of the imām. If the imām thinks that giving forgiveness is appropriate, he may do so. If he decides to impose the ta'zīr punishment by taking disciplinary action (ta'dīb wa tahdhīb), his decision is binding. The principle is that the imām may use his discretion and decide whatever is appropriate to prevent the offences from being repeated. Perhaps, for a noble person (karīm), forgiveness is more preventive to him than other types of ta'zīr punishment.<sup>57</sup> In outlining these rules, al-Juwaynī seems to agree with the opinion of al-Shāfi'ī as he mentions that these rules are in agreement with al-Shāfi'ī although he does not explicitly mentioning his agreement or otherwise.

A ta'zīr punishment should not exceed any hadd

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<sup>56</sup> Ibid., p. 218

<sup>57</sup> Ibid.

punishment except detention before a decision is made by the judge because the period of detention (ḥabs) is not limited in a ḥadd punishment. In other types of ta'zīr punishment, whoever exceeds the ḥadd punishment according to al-Juwaynī, he has committed a sin.<sup>58</sup>

Al-Juwaynī rejects the argument by the people whom he describes as the people of his generation (abnā' al-zamān) who hold the view that the opinion of Mālik is the only opinion which should be implemented in his period. According to Mālik, it is permissible for the Imām to exceed any ḥadd punishment in implementing a ta'zīr punishment. The Imām may consider capital punishment as one of the ta'zīr punishments.<sup>59</sup>

Regarding the above opinion, al-Juwaynī says that possibly, in supporting the view of Mālik, some ignorant people (al-jahalah) argued that the flexibility in lightening (takhfīf, singular for takhfīfāt) the ta'zīr punishment in the early period of Islām was due to the closeness of their time to the time when Islām was pure and at its peak. According to them, due to that reason, warning or advice was sufficient to deter the offenders from committing the same offence again. However, due to the

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<sup>58</sup> Ibid., p. 219, p. 222 and pp. 226 - 227

<sup>59</sup> Ibid.

change of the circumstances in the period when al-Juwaynī lived - when the heart of the people had become harsh and merciless, when the period of purity of Islām was far, when the faith of the people had become weak, and when desire and fear were been adhered to (mutashabbath) by the common people, the policy (siyāsāh) of being flexible in lightening the ta'zīr punishment would not be respected and effective. [Therefore, such a policy was not suitable for that period].<sup>60</sup>

In rejecting this view, al-Juwaynī says that holding this view means rejecting the sharī'ah itself. He also says that if this opinion is permitted to be implemented, it would lead to the implication that it should also be permissible to impose punishment of stoning (rajm) on non-muḥṣan (unprotected or unmarried person), to impose capital punishment on the accused persons for committing great offences (al-umūr al-khatīrah) [before proving them], to kill (ihlāk) those whose harm (ghā'ilah) to the land of Islām is feared and to add the amount of zakāt (obligatory alms) whenever necessary. Whereas these rules are not accepted in the Sharī'ah.<sup>61</sup>

In supporting his argument in rejecting the above

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<sup>60</sup> Ibid., pp. 219 - 220

<sup>61</sup> Ibid., pp. 220 - 221



view, al-Juwaynī quotes a story (hikāyah) about a scholar changing a rule of the Shari'ah for the purpose of preventing a ruler from committing sexual intercourse during the day of Ramaḍān. In the story, al-Juwaynī says that a scholar (ʿālim)<sup>62</sup> was asked a fatwa (opinion) by a ruler about the kaffārah (atonement) for committing sexual intercourse during the day of Ramaḍān. The scholar answered that the kaffārah for committing sexual intercourse during the day of Ramaḍān is daily fasting for two months continuously. When the scholar came out from the palace, he was asked by the people whether freeing a slave should be the first imposed as the kaffārah on one who commits sexual intercourse during the day of Ramaḍān if one is capable before imposing daily fasting for two months continuously. The scholar responded by saying that if he told the ruler that the first choice among the kaffārāt (atonements) for committing sexual intercourse during the day of Ramaḍān is freeing a slave, the ruler would easily commit the offence and pay the kaffārah but by saying that the kaffārah is daily fasting for two months continuously, it would prevent the ruler from committing the offence.<sup>63</sup> In commenting on this fatwā, al-Juwaynī says that the fatwa is a lie against the religion of God. He also says that if the scholar wants

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<sup>62</sup> The scholar meant is Yaḥyā b. Yaḥyā al-Laythī, a Mālikite, d. 243 A.H/857 C.E. and the king meant is ʿAbd al-Raḥmān b. al-Ḥakam (al-Ghiyāthī(1), p. 222, al-Ghiyāthī(2), p. 166)

<sup>63</sup> al-Ghiyāthī(1), pp. 222 - 223



to prevent the ruler from committing such an offence, he should warn the ruler with the severe punishment (‘iqāb) of God in the hereafter, not by changing (al-taṣrīf wa al-tahrīf) the law of God.”

Al-Juwaynī also rejects the argument that ‘Umar changed the punishment for drinking khamr (wine) from forty lashes to eighty lashes on the grounds that the circumstances had changed i.e. people continuously (tatābu) drink during his time. In rejecting this argument, al-Juwaynī says that the punishment for drinking khamr was not fixed by the Prophet in terms of the number of lashes. During the Prophet time, the Prophet only asked the people to beat the offender of drinking khamr with sandals (nu‘āl) and the edge of cloth (atrāf al-thiyāb). The punishment of whipping (jaldah) with forty lashes is the ijtihād of Abū Bakr and similarly, the punishment of whipping with eighty lashes is the ijtihād of ‘Umar. The fact that the punishment of whipping was the ijtihād of the above two Caliphs is supported by the saying of ‘Alī, the fourth Caliph:

“There is no man who dies that I do not have any share of truth except one who drinks khamr as the punishment [for the offence] is decided by us after the Messenger.”<sup>65</sup>

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<sup>64</sup> Ibid., pp. 223 - 224

<sup>65</sup> Ibid., pp. 225 - 226, Bukhārī, Muslim, Abū Dāūd and al-Tarmidhī (al-Ghiyāthi(1), p. 225).

As far as those who mislead people from the true path (dā'i fī al-dalālah) are concerned, the first step which should be taken by the imām is to prevent them from their activity. If they disobey the command from the imām, the imām should threaten (yatawa<sup>cc</sup>ad) them with punishment. If they ignore the threat, the imām should impose severe ta'zīr punishment. However, the imām should not exceed any hadd punishment. After the ta'zīr punishment has been imposed, the imām should put them under extensive observation. What is meant by extensive observation is that the imām should employ informers observe them. If they appear to repeat their activities of misleading people, the informers should inform the imām. When the imām obtains the information, he should warn and take disciplinary action (ta'dīb) against them. If they persist in their misleading activities, the imām should warn and impose the punishment again. It is permissible that due to the repetition of the punishments, a ta'zīr punishment may exceed the hadd punishment. However, a principle should be observed that in the case of repetition of the ta'zīr punishment, the maximum punishment which is permitted is up to the extent that the punishment deters the offender from his offence. If a light punishment is able to deter the offender from committing the offence, an extensive punishment becomes prohibited.<sup>66</sup>

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<sup>66</sup> al-Ghiyāthī(1), pp. 227 - 229

If the imām feels that despite extensive observation (murāqabah), these misleading people or innovators (al-mubtadi'ūn, plural for mubtadi') are still harmful to the people, the imām may detain them for a long period.<sup>67</sup>

As to the issue of the repentance of a heretic (zindiq), according to al-Juwaynī, his repentance should be accepted. To support his opinion, al-Juwaynī draws an analogy from another legal rule. Al-Juwaynī says that as far as he knows, all the scholars agree that the unbelievers who pronounce the shahādatayn under the force of the sword when the Muslims conquer their country are accepted as Muslims although they are not yet given guidance by God to accept Islām.<sup>68</sup>

Al-Juwaynī also supports his opinion by referring to the practice of the Prophet Muḥammad. Although the Prophet Muḥammad knew who were the hypocrites (munāfiqūn) during his time, he had accepted them as the members of the Muslim Community.<sup>69</sup>

In this issue, al-Juwaynī rejects the opinion of some of the early pious scholars that the repentance of a

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<sup>67</sup> Ibid., p. 229

<sup>68</sup> Ibid., pp. 230 - 231

<sup>69</sup> Ibid., pp. 231



heretic cannot be accepted.<sup>70</sup>

1.2.2.2.2.3. Supervising Persons Who are Exposed to  
Destruction (Mushrafīn 'alā al-Dayā') and  
Fulfilling the Needs of those in  
Need (al-Mahāwīj)

The third type of the duties in protecting what has been obtained which are related to private matters is to supervise the persons who are exposed to destruction due to the lack of protection (al-sawn wa al-hifz) and rescue (inqādh). This duty is comprised of two elements - acting as the guardian (wālī) in giving marriage and in managing wealth for the minors and mad persons (al-majānīn), all of whom do not have a guardian, and fulfilling the needs of those in need.<sup>71</sup>

As to the duty of fulfilling the needs of those in need, al-Juwaynī says that it is one of the important duties of the imām especially when the country or any part of the population suffer from disaster ('āfah), crisis ('azm), famine (qaht) and poverty (jadb).<sup>72</sup>

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<sup>70</sup> Ibid., p. 230

<sup>71</sup> Ibid., p. 203 and p. 233

<sup>72</sup> Ibid., p. 233



If such circumstances occur, but the needs can still be covered by zakāt, the imām should urge the people in a proper manner (maw'izah hasanah) to fulfil their duty to pay the zakāt. If the amount of the zakāt collected is not sufficient to cover the needs of those in need, the imām should pay attention to the problem and he should consider solving the problem as his greatest duty."<sup>73</sup>

If the supervision of the imām on such problem does not reach those people who suffer [in certain areas], it becomes the responsibility of the rich people (dhawī al-yasār wa al-iqtidār) [of that area] to fulfil their needs. If any one of those in need dies while the rich people remain in comfort, all the rich people are sinful."<sup>74</sup> Al-Juwaynī supports this principle by referring to a hadīth of the Prophet:

"Any one who believes in God and the Hereafter should not sleep at the night of the month of Sha'bān (laylat Sha'bān), if there is any of his neighbours starving".<sup>75</sup>

Al-Juwaynī also supports this principle by drawing an

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<sup>73</sup> Ibid.

<sup>74</sup> Ibid., p. 234

<sup>75</sup> Ibid., p. 234, in Bukhārī, al-Ṭabrānī, al-Ḥākim and al-Bayhaqī it is reported in different text:  
"One is not a believer if he is full while his neighbour is starved" (al-Ghiyāthī(1), p. 234).

analogy with another legal rule. He says that if a funeral of the dead is one of the public duties, preserving the life of a living person should be more important (ahamm wa atamm).<sup>76</sup>

However, if a population of a region (ahl al-balad) suffer from a serious famine and those who have sufficient supplies (balāgh) of food know that if they contribute all their supplies to those in need, they would also fall into the same disaster, it is not obligatory on those who have the sufficient supplies to contribute to those in need.<sup>77</sup>

If the serious disaster (al-durr) occurs and becomes extensive, it is permissible for the rich people (al-muwassirīn) to save their supplies of food but not more than the amount which can be sufficient for one year and the rest should be contributed to those in need.<sup>78</sup>

Al-Juwaynī also refers to the practice of the Prophet Muḥammad. He says that the Prophet used to save supplies of food for his wives which were sufficient for one year.<sup>79</sup>

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<sup>76</sup> al-Ghiyāthī(1), p. 234

<sup>77</sup> Ibid., pp. 234 - 235

<sup>78</sup> Ibid., pp. 236 - 237

<sup>79</sup> Ibid., p. 237

It is also a fact which can be accepted, according to al-Juwaynī, that normally circumstances (aḥwāl) change within one year as the different seasons (fuṣūl) do. One year is also a period for harvesting agricultural produce.<sup>80</sup>

However, al-Juwaynī says that, this rule is not an obligatory rule (amr majzūm, ḥukm maḥtūm).<sup>81</sup>

### 3. Al-Juwaynī's Conclusion on the Duties of the Imām

Al-Juwaynī concludes his discussion on the duties of the imām by saying that all the duties of the imam are within the general duty of enjoining good and forbidding evil which is required of every Muslim. The difference between the duty of the imām and the duty of the individuals is in the method of carrying out the duty. In fulfilling the duty of forbidding evil, the imām may use force but this is not permitted if the duty is carried out by individuals. The duty of forbidding evil by individuals should be carried out without crudeness (faḍāḍah). Similarly, in fulfilling the duty of enjoining good, the individuals should perform it without flattery (maliq).<sup>82</sup>

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<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid., pp. 237 - 238

If any pious people among the subjects (ra'īyyah) find any evil doers (mustakbirīn), the pious people should advise the evil doers to cease from their evil deeds. If the evil doers do not cease from their evil deeds, the pious people are not permitted to fight (mukāwahah) against them by using weapons.<sup>83</sup>

The imām is only responsible for conducting the affairs which are related to the general policies (ṣiyāsāt, plural for siyāsah). The imām is not responsible for conducting every small matter such as correcting weights (mawāzin) and measures (makāyil) in the markets. However, the imām should take action if the problem from the small matters is raised to him.<sup>84</sup>

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<sup>83</sup> Ibid., p. 238

<sup>84</sup> Ibid., p. 239



## CHAPTER FIVE

### ASSISTANTS AND EQUIPMENT REQUIRED BY THE IMĀM

For the imām to be capable and independent in performing his duties, he requires assistants to whom he may delegate all or parts of his duties to be carried out, an army to defend the country and the religion, and finances to provide all the necessities required by his assistants and soldiers.<sup>1</sup>

#### 1. Assistants Required by the Imām

##### 1.1. Types of Assistants

Al-Juwaynī divides the assistants who are required by the imām into two groups according to the nature of their jurisdiction and the nature of the duty delegated to them by the imām - the assistants who are delegated full jurisdiction and the assistants who are delegated partial jurisdiction.<sup>2</sup>

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<sup>1</sup> al-Ghiyāthī(1), p. 159 and pp. 204 - 205, See also p. 291

<sup>2</sup> Ibid., p. 133

### 1.1.1. Assistants Who are Delegated Full Jurisdiction

#### - wazīrs

The assistants who are delegated full jurisdiction by the imām are called wazīrs. The post the wazīr is called wizārah (ministry).<sup>3</sup> Although the wazīrs are delegated full jurisdiction i.e. wazīrs may execute all types of the duties of the imām, the execution of the duties by the wazīrs should be under the supervision of the imām. They are not independent of the imām.<sup>4</sup>

In delegating the duties to his assistants, it is not permitted for the imām to delegate all his duties to his assistants without supervising the execution of their duties even if the purpose of his delegation of his duties to his assistants is to spend all his time to worship God. It is the duty of the imām to carry out general supervision over the Muslim affairs personally. According to al-Juwaynī, the case of the delegation of all the duties by the imām without any supervision on the execution of the duties by his assistants is similar to the case of the appointment of two imāms concurrently, which is prohibited. Al-Juwaynī also says that the delegation of all the duties to his assistants without any supervision means that the

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<sup>3</sup> Ibid., p. 133

<sup>4</sup> Ibid., pp. 148 - 149

imām has committed sin which constitutes fiṣq and he is considered as withdrawing from his post of the imāmate. This principle is definite.<sup>5</sup> The execution of the duties of the imām by the imām himself is the original rule (al-aṣl) whereas the delegation to assistants is secondary.<sup>6</sup>

When the wazīrs are appointed by the imām to assist him in carrying out his duties, the wazīrs have all the jurisdiction of the imām - to execute, to judge, to make and to invalidate [contracts and agreements], and to appoint and to dismiss.<sup>7</sup> It is also understood that the jurisdiction does not only include matters pertaining subjects but also territories.<sup>8</sup> Therefore, the territorial jurisdiction of the wazīrs is also similar to that of the imām i.e. covering all the territories of Islām.

#### 1.1.1.1. Types of Wazīrs

As to the post of wazīrs, al-Juwaynī divides it into two types according to the nature of duties delegated - the wazīrs who are delegated duties with the power of making decisions by themselves and executing their decisions on

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<sup>5</sup> Ibid., pp. 148 - 149 and pp. 159 - 160, See also pp. 291 - 292

<sup>6</sup> Ibid., p. 293

<sup>7</sup> Ibid., p. 148 and p. 153

<sup>8</sup> See Ibid., p. 153



behalf of the imām, and the wazīrs who are delegated duties without being given the power of making decisions by themselves . The wazīrs of the later type only carry out the duties which have been decided by the imām. Al-Juwaynī calls the wazīrs of this type conveyors (mustashār muballigh) which is similar to the position of mediators (sufarā', plural of safīr).<sup>9</sup>

#### 1.1.1.2. Qualities Required for Wazīrs

For both types of wazīrs al-Juwaynī does not require that they should be of the descent from Quraysh. Non-Qurashīs are also permitted to be wazīrs.<sup>10</sup>

As to the qualities which are required for the assistants including the wazīrs, according to al-Juwaynī, their qualities are different according to the nature of the delegation given by the imām to them.

As to the delegation, al-Juwaynī divides it into two categories - general delegation ('amr 'āmm) and specific delegation ('amr khāss). General delegation is the delegation of which its purpose and characteristics are not described by the imām. The assistants who are delegated by

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<sup>9</sup> Ibid., pp. 154 - 155

<sup>10</sup> Ibid., pp. 149 - 150

this method, as afore-mentioned, are given the power to make decisions by themselves on behalf of the imām such as judges and governors. Specific delegation is the delegation of which its purpose and characteristics are described by the imām. The assistants who are delegated duties by this method do not have the power to make decisions by themselves. They only execute the orders from the imām.<sup>11</sup>

For the wazīrs who are delegated duties with the power of making decisions, al-Juwaynī requires six qualities - bravery (shahm), possession of power and capacity, possession of knowledge (dhā dirāyah), possession of acuteness of opinion (dhā nifādh al-ra'y), intelligence (itqād qarībah wa zakā' fitnah) and piety (mutalaffi'an min jalābīb al-diyānah, wara').

These qualities are required because these ministers carry out important duties.

Among these qualities, al-Juwaynī stresses the qualities of the possession of power and capacity and piety.

As for piety, al-Juwaynī says that the quality is a must. The reason for the rule is that piety is the foundation of good deeds (khayrāt) and virtues (manāqib).

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<sup>11</sup> Ibid., p. 293

Al-Juwaynī says that one who does not possess this quality would lead to evil and it is accepted by people who have sound mind that an impudent intelligent person is more harmful to the imām than a stupid person. There is also no doubt that reason (ʿaql) is the origin (ʿasl) of the virtues (al-fadā'il) but if reason is not associated with piety, it would become a means to evil.<sup>12</sup>

As for the quality of possessing knowledge, al-Juwaynī requires that the wazīrs of this type must reach the status of a mujtahid or a scholar in religious knowledge. Al-Juwaynī says that this opinion is also held by al-Shāfiʿī. The reason given by al-Shāfiʿī for this rule is that, as it will be discussed later, it is required that a judge must be a mujtahid. The wazīrs of this type also have the power to appoint and to dismiss the judges and governors on behalf of the imām. Therefore, To require the appointer to possess the quality of a mujtahid is more appropriate than to require the appointees i.e. judges and governors to possess the same quality.<sup>13</sup>

However, according to al-Juwaynī, the requirement of the wazīrs of this type to reach the status of a mujtahid does not reach the status of definiteness (al-qatʿ) because

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<sup>12</sup> Ibid., pp. 150 - 151

<sup>13</sup> Ibid., p. 151



they are not independent like the imām.<sup>14</sup> What is more acceptable (al-zāhir) to al-Juwaynī is that the wazīrs of this type must be at least a scholar in religious knowledge (imām fī al-dīn). The reason for this view is that the duties which are carried out by the wazīrs are important and it is difficult for them to refer to the imām in every single case. They may only refer to the imām in general matters (al-usūl wa al-majāmi'). Al-Juwaynī also says that if the wazīrs are not scholars in religious knowledge, they would not be free from error (zalal) in conducting the affairs of the Muslims.<sup>15</sup>

For the wazīrs who are not given the power of making decisions by the imām, but only to carry out the orders which have been decided by the imām, al-Juwaynī only requires two qualities:

- (i) The first requirement is trustworthiness by which their report would be reliable. Therefore, they must possess the quality of piety. The reason for this requirement is that the main duty of the wazīrs of this type is to convey the reports from the imām to the armies and the people

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<sup>14</sup> Ibid., pp. 153 - 154

<sup>15</sup> Ibid., p. 154

(ri'āyah).<sup>16</sup>

(ii) The second requirement is perspicacity (al-fiṭnah wa al-kiyāṣah). The reason for this requirement is that great matters cannot be understood except by perspicacious persons. Those who are not perspicacious (fiṭan) are not safe from committing mistakes in what they convey or perform. Their understanding is also not reliable.<sup>17</sup>

By restricting to only the two requirements above, it is understood that the status of a mujtahid or a scholar in the religious knowledge is not required for the wazīrs of this type.

Al-Juwaynī does not require free status as a quality to be wazīrs of this type. Slaves are also qualified for this post. The reason for this rule is that the duty which is carried out by the wazīrs of this type does not involve power or authority (wilāyah). It is only to convey news and reports (anbā' wa akhbār). Those who are possessed by others are also qualified to convey reports (ahl wilāyāt

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<sup>16</sup> Ibid., p. 155

<sup>17</sup> Ibid.

al-akhbār).<sup>18</sup>

As to the qualities required for the wazīrs, al-Juwaynī disagrees with al-Māwardī who holds the view that a dhimmī is qualified to be a wazīr. Al-Juwaynī says that this view does not have any basis (muqīl) and the view is a result of the lack of research (taḥsīl) by al-Māwardī. The reason for this disagreement is that, according to al-Juwaynī, trustworthiness is an obligatory requirement for the ministers. Al-Juwaynī says that a dhimmī cannot be trusted. The actions, words and reports of a dhimmī are not reliable. Similarly, the witness of a dhimmī against the Muslims cannot be accepted.<sup>19</sup>

Al-Juwaynī also says that there are also sufficient texts of the Qur'ān and the tradition (Sunnah) of the Prophet which prohibits the Muslims from trusting unbelievers. The following are the texts of the Qur'ān and the tradition of the Prophet Muḥammad which are provided by al-Juwayni:

"Take not into your intimacy those outside your ranks:  
They will not fail to corrupt you",<sup>20</sup>

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid., p. 156

<sup>20</sup> Ibid., p. 156, al-Qur'ān, Āli 'Imrān (3):118



"Take not the Jews and the Christians for your friends and protectors",<sup>21</sup>

"I am not responsible for any Muslim [who associates] with polytheist (mushrik) as their hells (nār) are not united"<sup>22</sup>

Beside the texts of the Qur'ān and the Sunnah of the Prophet Muḥammad, al-Juwaynī also bases his view on the refusal of 'Umar to accept the appointment of a Christian clerk (kātib) by Abū Mūsā al-Ash'arī<sup>23</sup> and on a sharī'ah legal rule which is formulated by al-Shāfi'ī that a translator in a court should be a Muslim who possesses satisfactory integrity ('adl raqī). Al-Juwaynī also says that as far as he knows there is no disagreement on this rule among the scholars of Islām.<sup>24</sup> From the argument above, it can be understood that according to al-Juwaynī, a wazīr must be a Muslim.

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<sup>21</sup> al-Ghiyāthī(1), p. 156, al-Qur'ān, al-Mā'idah (5): 54

<sup>22</sup> al-Ghiyāthī(1), p. 157, a hadīth, Abū Dā'ūd (al-Ghiyāthī(1), p. 157

<sup>23</sup> al-Ghiyāthī(1), p. 157, Abū Mūsā al-Ash'arī is Abū Mūsā 'Abdullah b. Qays (d. 42 A.H./662 - 3 C.E. (EI(S), p. 47)

<sup>24</sup> al-Ghiyāthī(1), p. 157

### 1.1.2. Assistants Who Are Delegated Partial Jurisdiction

Partial jurisdiction can refer to duties (a'māl) or territory.<sup>25</sup> It is understood that, in terms of duties partial jurisdiction means that the assistants have the power in certain duties which are delegated to them. In this case, the territorial jurisdiction of the assistants may cover all the territories of Islām or some parts of the territories depending on the delegation by the imām. In terms of territory, partial jurisdiction means that the assistants have the power to carry out the duties only within an area restricted by the imām. In this case, the assistants may cover all types of duties. Among the assistant posts to which the imām delegates partial jurisdiction are judges, governors, zakāt collectors, Officials (muwazzafāt) in charge of coins (al-ma'ādīn al-muqatta'āt) and the like, army commanders, and leaders of army units (ashāb al-alwiyah wa al-marātib).<sup>26</sup>

#### 1.1.2.1. Qualities which are Required for the Assistants who are Delegated Partial Jurisdiction

As to the qualities which are required for the assistants who are delegated partial jurisdiction, it is

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<sup>25</sup> Ibid., p. 158

<sup>26</sup> See Ibid. pp. 161 - 162 and pp. 293 -294

understood that the qualities for each of them are different depending on the nature of the the duties which are delegated by the imām to each of them.

However, although the detailed qualities required for each of the assistants of this type are different, there are also some common qualities which are required for each of them. For all of them, al-Juwaynī requires that they must be Muslim, pious and competent in the related duties delegated to each of them.<sup>27</sup>

As to the quality of the status of a mujtahid, it depends on the nature of the duties which are delegated to each of the assistants.

If the delegated duty is a clear matter (amr khālīṣ), so that it can be written in text (ḡabaṭah bi al-tansīs ‘alayh) and can be specified by designation, the assistants are not required to possess either the status of a mujtahid or the status of a scholar in religious knowledge.<sup>28</sup>

If the duty cannot be written in a text (lām yakun mimmā yadbituhū al-naṣṣ) but does not require the assistants to investigate (al-ittilā‘) the principles of the

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<sup>27</sup> Ibid., p. 160

<sup>28</sup> Ibid., p. 161



sharī'ah (qawā'id al-sharī'ah), the assistants are not required to possess the status of a mujtahid as they only carry out their duty as it is described or ordered by the imām. They are not given the power to make decisions by themselves. However, the assistants should possess basic understanding (al-baṣīrah) about the duties delegated to them in order to fulfil the objectives of the delegation. Among the assistants who are delegated such duties are zakāt collectors (alladhīn yantaṣībūn li jībāyat al-sadaqāt), officials in charge of coins and the like, army commanders (umarā' al-aḥnād), and leaders of other army units. Zakāt collectors should possess basic understanding about the wealth from which zakāt should be collected (al-amwāl al-zakā'iyyah), its minimum amount (niṣāb, singular of nuṣub), time and whatever rules related to it. Similarly, army commanders, leaders of other army units, officials in charge of coins and the like, should possess basic understanding about their own duties and the rules related to them.<sup>29</sup>

If the duty cannot be written in a text or can not be specified by the one who delegates the duty (al-muwallī) and knowledge in a specific field is not sufficient to make the assistants, such as judges, competent in carrying out their duties, the assistants are required to possess the

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<sup>29</sup> Ibid., p. 161 and p. 293

status of a mujtahid.<sup>30</sup>

In this issue, al-Juwaynī agrees with the opinion of al-Shāfi'ī and disagrees with the opinion of Abū Ḥanīfah who holds the view that a mugallid is also qualified to be a judge.

Regarding the disagreement between al-Shāfi'ī and Abū Ḥanīfah on whether a mugallid is qualified to be a judge, it is noticable in his writing in al-Ghiyāthī that al-Juwaynī is hesitant in holding either of the two views. At the beginning, al-Juwaynī chooses an impartial stance as he says:

"To us, this issue is an uncertain matter (maznūn); either one is not definite".<sup>31</sup>

However, al-Juwaynī changes his stance as he later says that the requirement of the status of a mujtahid for the judges is definite.<sup>32</sup> He totally rejects the opinion of Abū Ḥanīfah. Al-Juwaynī says that if a judge is a mugallid, it would lead to a contradiction to the nature of his duty. The reason for this argument is that judges are delegated duties with power or authority to make decisions.

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<sup>30</sup> Ibid., p. 162

<sup>31</sup> Ibid., p. 72

<sup>32</sup> Ibid., p. 295

Therefore, they should be followed and not follow others.<sup>33</sup>

This principle also applies to governors as the nature of the duties delegated to them, in terms of power or authority, is also similar to that of the judges.<sup>34</sup>

As to the quality of the competence of the assistants of this type in the duties which are delegated to them, its nature is different from one another according to the different nature of their duties.

To fulfil the quality of competence in the duties delegated to the assistants of this type, al-Juwaynī requires that army commanders and the leaders of other army units should possess the following characteristics:

- (i) severity (al-ṣarāmah)
- (ii) bravery (al-shahāmah)
- (iii) experience
- (iv) strongheadedness
- (v) activeness
- (vi) quickness in action
- (vii) skillfulness in handling dangers
- (viii) ability to attack at the appropriate time

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<sup>33</sup> Ibid., pp. 298 - 299

<sup>34</sup> Ibid., p. 163, p. 194 and p. 303



- (ix) possessing knowledge about the risks and dangers in fighting
- (x) patience during the turmoil of terror
- (xi) popularity in army
- (xii) possessing high dignity<sup>35</sup>

For the competence of the judges in their duties, al-Juwaynī requires the following characteristics:

- (i) possessing systematic reasoning capacity  
(al-ʿaql al-al-rājiḥ al-thābit)
- (ii) possessing correct judgement (al-ra'y al-mustadd wa al-sā'ib)
- (iii) free status (al-hurriyyah)
- (iv) ability to hear (al-samʿ)
- (v) ability to see (al-baṣr)<sup>36</sup>

The same characteristics apply to governors.<sup>37</sup>

As for the the assistants who are delegated duties by the imām without the power to make decisions or authority such as zakāt collectors, officials in charge of coins, al-Juwaynī does not require that the assistants must possess

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<sup>35</sup> Ibid., pp. 293 - 294

<sup>36</sup> Ibid., p. 295

<sup>37</sup> Ibid., p. 163, p. 294 and p. 303

free status. Slaves are also qualified for the posts.<sup>38</sup>

## 1.2. Number of the Assistants Required

As to the quantity of the assistants required by the imām, al-Juwaynī does not mention it by number but he has mentioned, during the discussion on the qualities required by the assistants, the names of the posts of the assistants. The names of the posts are as follows:

- (i) Wazirs
- (ii) Governors
- (iii) Judges
- (iv) Zakāt collectors
- (v) Officials in charge of coins
- (vi) Army commanders
- (vii) Leaders of army units
- (viii) Other officials who are in the same position, as  
the officials in charge of coins  
(wamā dāhāhā)

Probably the last post is meant for other government officials in administration. It is also understood that the number of persons in each posts depends on the needs of the country. For example. the imām would need a greater number

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<sup>38</sup> Ibid., p. 293

of the assistants in each of the posts when the territory of Islām extended over larger areas.

### 1.3. Dismissal of the Assistants

All the rules regarding the requirement of the qualities of the assistants of the imām for the purpose of the appointment, disqualification and dismissal are similar to those applying to the imām with the exception of the rules relating to fisq. It is not permitted for the imām to appoint any of his assistants if he does not fulfil all the qualities required. Similarly, if any of the circumstances which require the dismissal of the assistants occurs, the imām is the one who has the right to dismiss him.<sup>39</sup>

As to fisq, the rule applied to the assistants is different from that applied to the imām. If any of the assistants commits a sin or sins which constitute fisq, the imām should dismiss him.<sup>40</sup>

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<sup>39</sup> Ibid., p. 163

<sup>40</sup> Ibid.



## 2. Equipment Required by the Imām

### 2.1. Army

For the imām to fulfil his duties which are great and important such as to protect the country, to protect women folk (al-harīm) and to expand Islām to non-Islamic territory, it is an accepted fact that the imām requires power or strength (naidah wa 'uddah) i.e. the army and the soldiers must be professional ones (ma'qūd) as he says:

"No country can be established except by [having] trained and devoted soldiers".<sup>41</sup>

It is not permitted for the imām to rely only on volunteer soldiers. These soldiers which are employed by the imām are called murtaziqah i.e. the soldiers who are paid and to whom foods and necessities are supplied by the imām, so that these soldiers would be able to concentrate on their military duties and would not be occupied with other works such as involving in trade and seeking wealth and other comforts of life.<sup>42</sup>

In the history of Islām, during the time of the Prophet of Muḥammad and Abū Bakr, there was no government

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<sup>41</sup> Ibid., pp. 240 - 241

<sup>42</sup> Ibid.

office (dīwān) established to specialize in jihād (holy war) because during these periods, all the Anṣār (Helpers) and the Muhājirīn (Emigrants) were prepared to execute any command from the Prophet Muḥammad and Abū Bakr. At the time of ʿUmar, he began to train soldiers and had established a special government office specializing in military duties. His practice was later followed by the rulers who came after him.<sup>43</sup>

## 2.2. Finance

To fulfil his duties, it is also inevitable that the imām should have adequate finance (al-amwāl), for instance, for paying salaries to all his assistants. “

### 2.2.1. Sources of Finance

Al-Juwaynī divides the sources of finance which can be obtained by the imām into two categories according to the sectors to which the expenditures should be distributed - the sources of finance of which the sectors of expenditures are specified and the sources of finance of which the sectors of expenditures are not specified.

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<sup>43</sup> Ibid., p. 241

<sup>44</sup> Ibid.

#### 2.2.1.1. Sources of Finance of which the Sectors of Expenditures are Specified

The sources of finance of which the sectors of expenditures are specified are:

##### (i) zakāt

Zakāt is distributed to the seven groups of people who are mentioned in the Qur'ān.<sup>45</sup> It is certain that the groups which are meant by al-Juwaynī are the ones which are mentioned in Sūrah al-Tawbah (9):60 i.e. the destitutes, the poors, those employed to administer the fund [of zakāt], new converts [to Islām], slaves who are promised to be freed, those who are in debt, those who work in the cause of God and wayfarers.

##### (ii) 4/5 of al-fay'

Al-fay' is the wealth of unbelievers [which are legally acquired by the imām] including jizyah, wealth of apostates and the wealth which are left by unbelievers without fighting when the Muslims conquer their territories. According to some scholars, kharāj (singular

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<sup>45</sup> Ibid., p. 242



for akhrijah) is also included in al-fay'.<sup>46</sup> According to al-Juwaynī's view of the acceptable opinion, the 4/5 of al-fay' is specified for the professional soldiers.<sup>47</sup>

(iii) 4/5 of 1/5 of al-fay'

Similarly, the 4/5 of 1/5 of al-fay' is distributed to a specific sector. However, al-Juwaynī does not mention this sector in al-Ghiyāthī. He only says that the discussion on it can be found in a book specifically written for the field of fiqh.<sup>48</sup>

(iv) 4/5 of the spoils of war (al-qhanīmah)

(v) 4/5 of 1/5 of the spoils of war

Al-Juwaynī does not mention the sectors to which the spoils of war should be distributed. Probably, al-Juwaynī takes for granted that the distribution of this part of the spoils of war is well-known as stated in Sūrah al-Anfāl verse 41 i.e. 1/5 for the Prophet, dhawī al-qurbā, orphans, the poor and wayfarers, and 4/5 for the soldiers who are involved in the war.

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<sup>46</sup> Ibid.

<sup>47</sup> Ibid., p. 243

<sup>48</sup> Ibid.

## 2.2.1.2. Sources of Finance of which the Sectors of Expenditures are not Specified

The sources of finance of which the sectors of expenditures are not specified are as follows:

- (i) 1/5 of 1/5 of al-fay'
- (ii) 1/5 of 1/5 of the spoils of war
- (iii) Estates of the Muslims who died without being survived by any heir
- (iv) Lost properties of when finding their owners is hopeless.<sup>49</sup>

The finance which comes from the the sources of which the sectors of expenditures are not specified as mentioned above is called by the Muslim jurists as exigency fund (al-mirsād li al-maṣālih)<sup>50</sup>

As to the wealth of which the sectors of expenditures are not specified, al-Juwaynī says that much has been discussed by the jurists and there are various opinions and disagreements. Therefore, the imām should make his own decision on this matter.<sup>51</sup> For the imām to make his

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<sup>49</sup> Ibid., pp. 204 - 205

<sup>50</sup> Ibid., p. 205

<sup>51</sup> Ibid.

decision, al-Juwaynī provides general guides for how the finance should be distributed. He says that there are three categories of people to whom the finance should be distributed:

- (1) The first category is those in need (muhtājūn).

Most of these people are those who are entitled to zakāt as mentioned earlier. The poor are also entitled to the 1/5 of al-fay' and the spoils of war.

- (2) The second category of the people (aqwām) from whom the imām obtains assistance in fulfilling his duties. All the material needs of these groups must be provided by the imām in order that they should concentrate their attention to the duties which are delegated to them. Al-Juwaynī divides this category into two groups:

- (i) The first group is the professional soldiers. As earlier mentioned, this group is entitled to 4/5 of al-fay'.

- (ii) The second group is those who are appointed to uphold the essential elements of the religion (iqāmat arkān al-dīn). Those who



are included in the group are judges, arbitrators (hukkām), the distributors [of inheritance] (al-qassām), the muftīs, the scholars (al-mufaqqihūn) and any other who are involved in upholding the principles (qawā'id) of the religion which diverts them from other sources of sustenance. The contribution to this second group should be taken from the exigency fund.<sup>52</sup>

- (3) The third category of the people to whom the imām should distribute the finance is the group which is described by the Qur'ān. This group is called dhawī al-qurbā or Banū Hashim and Banū al-Muṭṭalib. They are entitled to a share from the 1/5 of the spoils of war. In this issue, al-Juwaynī explicitly agrees with the opinion of al-Shāfi'ī.<sup>53</sup>

It is understood that the above-mentioned financial sources are the ones for ordinary period or during the period if the bayt al-māl (national fund) still has sufficient funds for the expenditures.

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<sup>52</sup> Ibid., pp. 244 - 247

<sup>53</sup> Ibid., p 247

### 3.1.3. Occasional Sources - Wealth of the Rich People

If the bayt al-māl is empty, according to al-Juwaynī, the sources of finance from which the imām may obtain are different according to the circumstances:

(i) If the non-Muslim enemy has conquered some parts of the Islamic territories, the imām has the right to command the rich people to contribute to the bayt al-māl.<sup>54</sup>

To support this rule, al-Juwaynī bases his argument on some other legal rules. He says that it is unanimously agreed upon by the bearers of the sharī'ah that if the territory of Islām is trespassed by the unbelievers, every individual Muslim is responsible to defend it. From this rule, al-Juwaynī says that if life should be sacrificed in defending the Islamic territory, it is more appropriate that the wealth should also be sacrificed.<sup>55</sup>

Al-Juwaynī also says that it is also unanimously agreed upon by the Muslims that if there are poor people facing difficulty at any period, it is the obligation of the rich people to help them. Similarly, the rich people should contribute their wealth for the funeral (tajhīz al-

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<sup>54</sup> Ibid., p. 258

<sup>55</sup> Ibid., pp. 258 - 259

mayyit) and other public duties. From these rules, al-Juwaynī says that it is more appropriate that the rich people should contribute their wealth for the defence of the Islamic territory.<sup>56</sup>

(ii) The second situation is that when the Muslims expect that the fund in the bayt al-māl is running out and empty. As a result, the Muslims expect that their affairs and the defence of the country would deteriorate and would seduce the unbelievers to attack the Islamic territory if steps to overcome them are not taken.<sup>57</sup>

In this situation also, the imām is permitted to obtain finance from the rich people. Regarding this rule, al-Juwaynī make a remark that preventing is easier than recovering (al-dafʿ ahwan min al-rafʿ).<sup>58</sup>

(iii) The third situation is that although the Muslims do not fear or expect any attack from the unbeliever enemy but the imām needs the finance for the preparation to perform jihād and war internally or externally.<sup>59</sup>

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<sup>56</sup> Ibid., pp. 259 - 260

<sup>57</sup> Ibid., p. 260

<sup>58</sup> Ibid.

<sup>59</sup> Ibid., p. 261



In this situation, according to al-Juwaynī, the imām has the right to obtain finance from the rich people.

Regarding this rule, al-Juwaynī does not agree with the opinion of some scholars who hold the view that in this situation, the imām does not have the right to obtain finance from the rich people.<sup>60</sup>

To support his opinion, al-Juwaynī says that jihād is obligatory on every Muslim. To send armies to jihād is not an easy duty. Al-Juwaynī argues that if ignoring (ta'tīl) any of the public duties is not permitted, how could ignoring wars (al-ghazawzat) against the enemy be permitted. Al-Juwaynī also says that the matter relating to authority, if it is not overcome from the beginning, it would be difficult to be overcome when it has become extensive. He also says that among the duties of the imām is to convey the message of Islām. The most dangerous things that the imām may commit in fulfilling this duty is to ignore the army, to suspend jihād and to detain the soldiers ('asākir) in the frontier posts.<sup>61</sup>

If the imām decides to obtain finance from the rich people and orders them to contribute their wealth to bayt

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<sup>60</sup> Ibid., pp. 262 - 262

<sup>61</sup> Ibid., pp. 261 - 262

al-māl, they must obey the order.<sup>62</sup>

#### 2.2.1.3.1. Limit of the Collection of Wealth from the Rich People

When bayt al-māl has sufficient fund, the imām should stop the collection of wealth from the rich people. It is not permitted for the imām to collect wealth from the rich people for building palaces or for saving.<sup>63</sup>

#### 2.2.1.3.2. Methods of the Collection of Wealth from the Rich People

In obtaining finance from the rich people, the imām should take into consideration that he should not cause burden to them. He should not follow his own desire.<sup>64</sup> Instead, he should follow correct reason [and rule] (wajh al-ra'y wa al-sawāb). For example, he should equally order all the rich people in all regions to contribute their wealth without bias.<sup>65</sup> The imām may specify certain group to make contribution such as those who possess plenty of wealth and have less dependents (ʿayāl) or those who possess

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<sup>62</sup> Ibid., p. 269, p. 270, p.271 and p. 272

<sup>63</sup> Ibid., p. 286

<sup>64</sup> Ibid., p. 270

<sup>65</sup> Ibid., p. 271

plenty of wealth and it is feared that with it, they would be evil-doers (an yatqhā).“

#### 2.2.1.3.3. Nature of the Collection of Wealth from the Rich People

As to the nature of the collection of wealth from the rich people by the imām, before giving his own opinion, al-Juwaynī precedes with two opinions of people (nās).

The first opinion is that the nature of the collection of wealth from the rich people is as loan. Therefore, when bayt al-māl has funds, the imām should repay those whose wealth was collected. Those who contribute to the bayt al-māl according to the order by the imām have the right to claim back their wealth.“

The second opinion is that if the collection (istidā') of the wealth is from all the rich people in the country, the collection is not considered as a loan. However, if the collection is only made from a certain group of the rich people, the collection is considered as a loan.“

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<sup>66</sup> Ibid., p. 273

<sup>67</sup> Ibid., p. 274

<sup>68</sup> Ibid., p. 275



Those who hold these views base their argument on the practice of the Prophet Muḥammad. The prophet Muḥammad used to borrow (istaslafa) from the rich people or used to ask people to advance the payment of zakāt when there were poor people facing difficulty. They say that if it is permitted to collect peoples's wealth without it being through a loan, the Prophet Muḥammad would have told the people so. This shows that the nature of the collection of the wealth of the rich people by the imām should be considered as a loan.<sup>69</sup>

Both these opinions are rejected by al-Juwaynī. According to him, the imām has the right to obtain finance from the rich people to fulfil the needs for performing his duties. It is not an obligation on him to repay the wealth which he has collected from the rich people, whether the collection was from all the rich people throughout the country or from a specific group of them.<sup>70</sup>

The reason for the above opinion is that if there is no imām existing in power for the Muslims, it is an obligation on each Muslim who is mukallaf (possessing legal capacity) to fulfil public duties. When the imām exists, the function of the imām is only to take responsibility to

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<sup>69</sup> Ibid., pp. 274 - 275

<sup>70</sup> Ibid., p. 275

conduct the affairs of the Muslims on their behalf. If the imām collects wealth from the rich people to perform a public duty, the imām only asks some of the capable mukallafīn to fulfil the public duty which is originally the public duty of all Muslims who are mukallafīn. When the rich people have fulfilled the duty, all other mukallafīn are free from the obligation.<sup>71</sup>

Al-Juwaynī also argues that if the imām has to repay the wealth which he has collected from the rich people, he would take the wealth from the bayt al-māl for the repayment. However, it may happen that after the repayment, the imām would need the wealth again. If that happens, he would collect again the wealth from the rich people to whom the imām had just made the repayment. If this happens, it would lead to an unending series of collection and repayment. The repayment of the loan which is imagined, in reality, would never be realized.<sup>72</sup>

To support his argument, al-Juwaynī draws an analogy with some other legal rules:

- (i) If there somebody who does not possess any wealth is in hunger and is about to die, it is

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<sup>71</sup> Ibid., pp. 275 - 277

<sup>72</sup> Ibid., p. 276

the duty of the one who has food to feed the hungry person. The reason is that preserving human life is among the public duties of every Muslim at any time. When the hungry person is fed, the one who feeds him has no right to ask for compensation (‘iwad).<sup>73</sup>

(ii) It is an obligation of the rich people to feed the people in hunger. When the rich people feed the hungry, they do not have the right to ask for compensation. According to al-Juwaynī, this rule is unanimously agreed upon [by the Muslim scholars].<sup>74</sup>

(iii) The poor among the Muslims are like a poor son in relation to a father. It is not permitted for a rich father to ask his son to take a loan from him.<sup>75</sup>

(iv) If a Muslim finds a person who is caught in a fire or drowning, it is an obligation on the former to save the latter. If the former saved the latter, the former does not have the

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<sup>73</sup> Ibid., p. 278

<sup>74</sup> Ibid.

<sup>75</sup> Ibid., pp. 278 - 279



right to ask for any compensation from the latter.<sup>76</sup>

It is understood from these four cases provided by al-Juwaynī that what al-Juwaynī intends to indicate is that when the imām collects wealth from the rich people at a time of need, the rich people do not have the right to ask the imām to repay the wealth to them. Therefore, the conclusion is that the wealth which is collected by the imām when the bayt al-māl is empty or for the purpose of performing jihād, cannot be considered as a loan.

Al-Juwaynī also supports his argument by providing a tradition of the Prophet Muḥammad. He says that the Prophet used to ask the rich Companions to contribute their wealth when he wanted to prepare an army for a war.<sup>77</sup>

#### 2.2.1.4. Produce of Agriculture

If due to the vastness of the Islamic territories or other needs, a huge number of the professional soldiers, frontier and observation posts are needed and the bayt al-māl does not have adequate fund to fulfil the needs despite spoils of war and al-fay', the imām also has the right to

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<sup>76</sup> Ibid., p. 279

<sup>77</sup> Ibid., pp. 279 - 280

obtain finance from the produce of agriculture.<sup>78</sup>

#### 2.2.2. It Is not Permitted for the Imām to Expect Spoils War as A Source of Finance

Although spoils of war is a source of finance for the imām, it is not permitted for the imām to expect the spoils of war as a source of finance of the imāmate. The reason for this rule is that spoils of war is not the objective of the war in Islām. The objective of the war in Islām is to put the word of God in a superior position (i'ālā' li kalimatillāh).<sup>79</sup>

#### 2.2.3. Fines are not Sources of Finance of the Imām

It is also not permitted for the imām to impose fines (ḍurūb al-maghārim) as a type of ta'zīr punishment to be sources of finance for the imām. The reason for this rule is that there is no provision in the sharī'ah permitting the imām to do so.<sup>80</sup>

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<sup>78</sup> Ibid., pp. 281 - 283

<sup>79</sup> Ibid., p. 282

<sup>80</sup> Ibid., pp. 287 - 288

#### 2.2.4. It Is not Necessary For the Imām to Spend all the Revenues of Each year in the Same Year

Before giving his own opinion on whether the imām has to spend all the revenues of the bayt al-māl of each year in the same year, al-Juwaynī precedes with an opinion of some groups of the early pious scholars. According to the opinion, the imām should spend all the revenues which are collected in the bayt al-māl year in the same year and no balance should be left. Therefore, if there is any excess from 4/5 of al-fay' after paying to the professional soldiers, the imām should return and recontribute the excess to them according to their status (ʿalā aqdār aʿtiatuhum wa aqsātuhum).<sup>81</sup>

However, if there is any excess from zakāt after the contribution to those who are entitled has been made and all those entitled have become financially independent by the payment, the excess should not be returned to them. The reason for this rule is that the entitlement of zakāt is due to their need. When their need has been lifted, they are no longer entitled. In this case, the excess of zakāt (obligatory alms) from the area where all those who are entitled have been made financially independent by the contribution of zakāt, should be contributed to those who

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<sup>81</sup> Ibid., pp. 247 - 248



are entitled in other areas or should be spent for the public interests.<sup>82</sup>

As to the exigency fund, if there is any excess of revenue in it, according to these groups of scholars, the excess of the revenue should be spent according to the priorities. The first priority is for the expenditure of the professional soldiers, followed by those who are entitled to zakāt. The revenue in this fund is for all purposes. If any expenditure for any sector is not sufficient, it should be supplemented by the revenue from the exigency fund (al-māl al-mirsad li al-maṣāliḥ).<sup>83</sup>

It is also the opinion of these groups of scholars that if all the needs and necessities are lifted, the excess of revenue from the exigency fund should be spent for building rest houses for travellers (al-ribātāt), bridges (ganātīr), mosques and the like.<sup>84</sup>

The conclusion from this opinion is that all revenues of each year should be spent and no balance should be left at the end of the year, as mentioned earlier. Those who hold this opinion base their argument on the practice of

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<sup>82</sup> Ibid., p. 248

<sup>83</sup> Ibid., pp. 248 - 249

<sup>84</sup> Ibid., p. 249

the Guided Caliphs. The Guided Caliphs were not used to utilize or to obtain help (mā kānū yastazhirūn) from the excess of the revenues (dhakhā'ir) of the bayt al-māl of each year for the expenditure of the following year.<sup>85</sup>

Al-Juwaynī does not agree with this opinion. According to him, when all needs have been fulfilled by the imām and if it is possible for the imām to use or to obtain help (istizhār) from the balance of the revenue in the bayt al-māl for the expenditure of the following year by saving it, the imām must do so. This rule, according to al-Juwaynī, is definite.<sup>86</sup>

The reason for this rule is that it is a definite rule that the imām must use or obtain help (istizhār) from the professional soldiers (al-junūd wa al-ʿasākir al-maʿgūd) whenever possible even if the enemy is far in distance and the territories of Islām are huge, because the country would not be safe from disasters if it does not have power prepared to defend it. The army cannot function without finance. Finance is a precondition for the army to function. If using or obtaining help from the army is compulsory, it is more appropriate that using or obtaining help from the balance of the the revenue of each year for

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid., p. 250

the following year to be obligatory. Therefore, the balance of the revenue of each year should be saved for the defence of the country in the future and should not be exhausted by building rest houses, bridges and so on.<sup>87</sup>

As to the evidence which is based by those who hold the view that all the revenues of each year should be spent in the same year i.e. the Guided Caliphs were not used to utilize or to obtain help from the balance of the revenue of each year for the following year, al-Juwaynī says that during the time of the Guided Caliphs there was no revenue left to be saved at the end of every year as all the revenues were used. At the time of Abū Bakr, all the revenues were used for fighting those who refused to pay zakāt. At the time of 'Umar, as the territories of Islām expanded, the number of battles between the Muslim Armies and non-Muslim Armies increased and the affairs of the Muslims became more complicated, most of the revenues were spent on the relevant sectors. Therefore, there was no balance from the revenue to be saved.<sup>88</sup> At the time of 'Uthmān, it was not certain whether there was any balance from the revenue of each year. However, in the belief of al-Juwaynī believes that 'Uthmān used to have a balance from the revenue of each year and he used to save it to be used

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<sup>87</sup> Ibid., pp. 250 - 251

<sup>88</sup> Ibid., pp. 251 - 254



in the future.<sup>89</sup> During the time of 'Alī, it is understood from al-Juwaynī's writing that there was no balance from the revenue of each year as all the revenues were spent on fighting the rebels and on the battles preparation.<sup>90</sup>

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<sup>89</sup> Ibid., p. 254

<sup>90</sup> Ibid.

## CHAPTER SIX

### THE LEGITIMACY OF THE IMĀMATE OF THE FOUR GUIDED CALIPHS

From his brief writings on the imāmate in his Lam<sup>c</sup> al-Adillah and al-Irshād, it is understood that according to al-Juwaynī, Abu Bakr, ʿUmar, ʿUthmān and ʿAlī are legitimate imāms for the Muslims.<sup>1</sup>

Al-Juwaynī provides a chapter (bāb) in his al-Irshād, to prove the legitimacy of the imāmate of the four Guided Caliphs.<sup>2</sup> The evidence for their legitimacy is the ijmā<sup>c</sup> of the Muslims.<sup>3</sup> All these Guided Caliphs were appointed by the way of election (ikhtiyār).<sup>4</sup>

#### 1. Evidence for the Validity of the Appointment of the Four Guided Caliphs

The validity of the appointment of Abū Bakr as the the first caliph is based on the ijmā<sup>c</sup> of the Companions.<sup>5</sup> When Abū Bakr was appointed as the successor of the Prophet

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<sup>1</sup> Lam<sup>c</sup> al-Adillah, p. 114, al-Irshād, p. 428

<sup>2</sup> al-Irshād, pp. 428 - 434

<sup>3</sup> Lam<sup>c</sup> al-Adillah, p. 115

<sup>4</sup> Ibid.

<sup>5</sup> al-Irshād, pp. 428

Muḥammad, all the Companions agreed upon his appointment and agreed to obey him as the imām.<sup>6</sup> In Lam<sup>c</sup> al-Adillah, al-Juwaynī says that all the Muslims had agreed upon the appointment of Abū Bakr.<sup>7</sup> In responding to the allegation by al-Rawāfiḍ who say that ‘Alī opposed the appointment of Abū Bakr and refused to give his allegiance to him when he was appointed as the successor of the Prophet Muḥammad, al-Juwaynī says that the allegation was a clear lie. Instead, ‘Alī was known to have obeyed Abū Bakr, had participated in the Battle (ghazwah) against Banū Ḥanīfah and had acquired (mutasarriya) slave girl (jāriyah) captured in the war.<sup>8</sup> Al-Juwaynī continues saying that it is true that ‘Alī was not in the Saqīfah when the appointment of Abū Bakr took place. ‘Alī secluded himself due to the sadness which was caused by the death of the Prophet Muḥammad. However, he went to Abū Bakr later on and gave his allegiance to him. His allegiance to Abū Bakr was witnessed by many people (mal' min al-ishhād).<sup>9</sup>

The bases for the legitimacy of ‘Umar, ‘Uthmān and ‘Alī are also continuously transmitted report (khavar mutawātir)

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<sup>6</sup> al-Irshād, p. 428

<sup>7</sup> Lam<sup>c</sup> al-Adillah, p. 115

<sup>8</sup> al-Irshād, p. 428, However, al-Ṭabarī reports that ‘Alī and Zubayr stayed away from giving bay‘ah to Abū Bakr until they were asked by ‘Umar to do so. (See al-Ṭabarī, op. cit., vol. 3, p. 203)

<sup>9</sup> Ibid.



and the ijmā'.<sup>10</sup> It is the ijmā' of all times on the trueness of the report that 'Umar was made appointed successor (walī al-ahd) by Abū Bakr and 'Uthmān was appointed by the shūrā among the six persons chosen by 'Umar before his death.<sup>11</sup>

As to the legitimacy of the imāmate of 'Alī, in responding to those who argue that there was no ijmā' for the appointment of 'Alī as the imām, al-Juwaynī says that the claim does not give any effect to the legitimacy of his imāmate.<sup>12</sup> On the issue of the opposition of Mu'āwiyah against 'Alī, al-Juwaynī says that what is opposed by Mu'āwiyah was not the imāmate of 'Alī but the murder of 'Uthmān. Mu'āwiyah neither denied the validity of the imāmate of 'Alī nor did he claim the imāmate for himself.<sup>13</sup>

As to the conflict between 'Alī and Mu'āwiyah, it is found in al-Juwaynī's different works that al-Juwaynī has two different views on who was on the correct side between 'Alī and Mu'āwiyah.

In Lam' al-Adillah, al-Juwaynī says that Mu'āwiyah was

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<sup>10</sup> al-Irshād, pp. 429 - 430, Lam' al-Adillah, p. 115

<sup>11</sup> al-Irshād, p. 430

<sup>12</sup> Ibid.

<sup>13</sup> Lam' al-Adillah, p. 115

on the wrong side and 'Alī was on the right side.<sup>14</sup> Whereas in al-Ghiyāthī, al-Juwaynī says that 'Alī regretted for what had happened in the war between him and Mu'āwiyah.<sup>15</sup> Due to this regret, 'Alī accepted the arbitration (al-tahkīm) between him and Mu'āwiyah for his dismissal from the post of the imāmate.<sup>16</sup> It is understood from Alī's regret, what al-Juwaynī wants to say is that 'Alī was on the wrong side and Mu'āwiyah was on the right side. To prove the wrongness of 'Alī in this conflict, al-Juwaynī says that when the conflict started between Mu'āwiyah and 'Alī, many companions refused to go to the battle against Mu'āwiyah when they were ordered by 'Alī such as Sa'd bin Abī Waqqāṣ<sup>17</sup>, Sa'īd b. Zayd 'Amrū b. Nufayl<sup>18</sup>, Abū Mūsā al-Ash'arī<sup>19</sup>, 'Abdullah b. 'Umar<sup>20</sup>, Usāmah b. Zayd<sup>21</sup> and Abū Ayyūb al-Anṣārī<sup>22</sup>.

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<sup>14</sup> Ibid.

<sup>15</sup> al-Ghiyāthī(1), p. 114

<sup>16</sup> Ibid., pp. 114 - 115

<sup>17</sup> died in 55 A.H./674 C.E.

<sup>18</sup> He is Sa'īd b. Zayd 'Amr b. Nufayl al-'Adwī, died in 50 A.H./670 C.E. (al-Ghiyāthī(1), p. 113)

<sup>19</sup> He is 'Abdullah b. Qays b. Salīm Abū Musā al-Ash'arī, probably died in 52 A.H./672 C.E. (al-Ghiyāthī(1), p. 113)

<sup>20</sup> He is 'Abdullah b. 'Umar al-Khaṭṭāb, d. 73 A.H./692 C.E. (al-Ghiyāthī(1), p. 113)

<sup>21</sup> He is Usāmah b. Zayd b. Ḥārithah, most probably died in 54 A.H./673 C.E. (al-Ghiyāthī(1), p. 113)

<sup>22</sup> He is Khālīd b. Zayd b. Kulayb Abū Ayyūb al-Anṣārī al-Khazrajī, possibly died in 50 A.H./670 C.E., 52 A.H./672 C.E., or 55 A.H./675 C.E. (al-Ghiyāthī(1), p. 113)

However, 'Alī did not seriously oppose or was angry with their refusal and he still paid sustenance to them from bayt al-māl despite their refusal. Al-Juwaynī says that if 'Alī had been angry with them, he would have forced them to go to the battle against Mu'āwiyah but he did not.

To substantiate the refusal of the above-mentioned Companions, al-Juwaynī provides some quotations from some of them. Al-Juwaynī says that when 'Alī summoned Sa'd b. Abī Waqqāṣ to the battle against Mu'āwiyah, he said to 'Alī:

"I will not go out. Otherwise my sword will have two tongues. One would give its witness for the faith of the believers and another would give its witness for the hypocrisy of the hypocrites".<sup>23</sup>

Abū Mūsā said to the people in Yemen opposing the battle against Mu'āwiyah:

"I am a sincere advisor to you. Do not go against me. Put away your spears. Cut off your ropes (awṭār) [and do not be involved in the battle against Mu'āwiyah] because I have heard the Prophet said: There will be a fighting (fitan) like a night assault (qaṭ'i al-layl) - the one who sleeps is better than the one who sits. The one who sits is better than the one who stands and the one who stands is better than the one who walks."<sup>24</sup>

and Usāmah said:

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<sup>23</sup> al-Ghiyāthī(1), pp. 111 - 112

<sup>24</sup> Ibid., p. 114



"O the Commander of the believers, if you were put in the hollow of a lion, I would enter with you but there is no compromise with the hell (al-nār)."<sup>25</sup>

All these quoted statements support al-Juwaynī's view that 'Alī was on the wrong side. From Sa'd's statement, it is understood that Mu'āwiyah represents the believers and 'Alī represents the hypocrites. Usāmah's statement indicates that the command from 'Alī to go against Mu'āwiyah was a wrong command.

In conclusions, it can be understood that the conflict between 'Alī and Mu'āwiyah was not due to his opposition to the imāmate of 'Alī but it was due to the murder of 'Uthmān. That was why 'Alī as the legitimate imām after 'Uthmān was not challenged by Mu'āwiyah.

## 2. Evidence for the Fulfilment of the Required Qualities by the Four Guided Caliphs

In proving the validity of the imāmate of the four Guided Caliphs, al-Juwaynī states that all the four Guided Caliphs fulfilled all the required qualities for the imāmate.<sup>26</sup> As to the requirement of the descent from

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<sup>25</sup> Ibid.

<sup>26</sup> Lam' al-Adillah, p. 116, al-Irshād, pp. 429 - 430

Quraysh, all of them are from the descent from Quraysh.<sup>27</sup> It is well known that all of them are among the learned Companions and the muftīs. No one denies that they were all involved in making laws.<sup>28</sup> Their piety and the continuation of their piety is definite as no defamation has ever been proven against them. Their constant preparedness to learn about the religion and the fact that the report about their piety which is made by trustworthy reporters also support their pious quality.<sup>29</sup> Their contributions (āthāruhum) to Islām and their practice (sīrah) show clearly their power and capacity.<sup>30</sup>

As to the requirement that the imām must be from the best person among the people, in Lam' al-adillah, al-Juwaynī says that the best persons after the Prophet Muḥammad were Abū Bakr, then followed by 'Umar, then 'Uthmān and then 'Alī.<sup>31</sup> In al-Irshād, On the same issue, al-Juwaynī says that the best persons after the Prophet Muḥammad were Abū Bakr and then followed by 'Umar. As regard to 'Uthman and 'Alī, there was conflict of belief on who between the two is better. To substantiate this conflict of belief, al-Juwaynī

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<sup>27</sup> al-Irshād, p. 429

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Lam' al-Adillah, p. 115

quotes the saying of the Prophet Muḥammad which is reported by 'Alī:

"The best people after their Prophet are Abū Bakr and 'Umar, and then God knows who is better after the two."<sup>32</sup>

However, al-Juwaynī says that when the Muslims appointed the four Guided Caliphs, they appointed whom they considered to be the best persons in that order.<sup>33</sup>

### 3. Evidence from the Saying of the Prophet Muḥammad and the Qur'ān

In addition, to the above evidences, al-Juwaynī also supports his view by quoting a saying of the Prophet Muḥammad:

"The period of the caliphate after me will be thirty years. After that, it will be followed by tyrant kings."<sup>34</sup>

and al-Juwaynī says that that was the real period of the four Guided Caliphs. By this ḥadīth, what al-Juwaynī wants

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<sup>32</sup> al-Irshād, p. 431

<sup>33</sup> Lam' al-Adillah, pp. 115 - 116

<sup>34</sup> Lam' al-Adillah, p. 116



to imply is that the period which is meant by the Prophet Muḥammad in the ḥadīth is the period of the imāmate of the four Guided Caliphs. Therefore, there is no doubt that their imāmate is legitimate.

### 3. Evidence from the Saying of the Prophet and the Qur'ān

Besides, in responding to the invectives by those who are against the imāmate of the four Guided Caliphs, al-Juwaynī says that there are many sayings of the Prophet and the verses in the Qur'ān which support the fact that the four Guided Caliphs are pious. The verses of the Qur'ān also praise them. However, al-Juwaynī does not quote any of the said verses in his writing.<sup>35</sup>

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<sup>35</sup> al-Irshād, p. 433, Probably, the verses which al-Juwaynī means here are the verses which are mentioned by al-Ash'arī in al-Lumā', pp. 134 - 135. The verses are:

- (i) "Those who lagged behind (will say), when you are free to march and take booty (in war): "Permit us to follow you" They wish to change God's decree. Say: "Not thus will you follow us". God has already declared this beforehand, "But you are jealous of us", Nay but little do they understand (such things)" (al-Fatḥ (48):15)
- (ii) "Say to the desert Arabs who lagged behind: "You shall be summoned (to fight) against a people given to vehement war: then shall you fight or they shall submit. Then if you show obedience, God will grant you a goodly reward, but if you turn back as you did before, He will punish you with a grievous penalty". (al-Fatḥ (48):16)
- (iii) "Say: Never shall you come out with me; for you preferred to sit inactive on the first occasion; then sit you (now) with those who lag behind". (al-Tawbah (9):83)

The verses (i) and (ii) are also mentioned in al-Ibānah, pp. 71 -72. Another verse which al-Ash'arī mentioned in al-Ibānah is al-Fatḥ

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(48):18:

"God's good pleasure was on the believers when they swore fealty to you under the tree"

From the first three verses al-Ash<sup>c</sup>ari argues that the one who would summon the desert Arabs meant in the verse al-Fath (48):16 is either Abū Bakr or <sup>c</sup>Umar. The reason is that "the people given to vehement war" would mean either the Persians and Byzantines or the people of Yamāmah. In his argument, al-Ash<sup>c</sup>ari says that if those people are the Persians, the Byzantines or the people of Yamāmah, Abū Bakr would be the one who is meant by the verse as those people were fought at his time. If those people are only the Persians, it could be Abū Bakr or <sup>c</sup>Umar as they were fought during the periods of both of them. However, if it was <sup>c</sup>Umar, then the imāmate of Abū Bakr was also valid as Abū Bakr was the one who appointed <sup>c</sup>Umar as his successor.

## CHAPTER SEVEN

### THE LEGITIMACY OF THE DE FACTO IMĀMATE OF NIẒĀM AL-MULK

After discussing the third legitimate method of the appointment of the imām - the appointment by usurpation, in the second book of his political compendium, al-Ghiyāthī, al-Juwaynī continues with a detailed elaboration on the legitimacy of the de facto imāmate of a powerful and capable person whose name is not mentioned explicitly in the compendium. In the compendium, al-Juwaynī only refers to this person by titles such as Sadr al-Dīn<sup>1</sup> (the Leader of the Religion), Mustakhdīm al-Sayf wa al-Qalam<sup>2</sup> (the User of Sword and Pen), Ghiyāth al-Dawlah<sup>3</sup> (the Saviour of the Country), Sadr al-Ayyām<sup>4</sup> (the Leader of the Days), Mawlānā<sup>5</sup> (Our Master), Sadr al-Zamān<sup>6</sup> (the Leader of the Time), al-Majlis al-Sāmī<sup>7</sup> and Sadr al-Anām<sup>8</sup>. However, from indications found in his writings in the compendium and

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<sup>1</sup> Ibid., p. 363 and p. 374

<sup>2</sup> Ibid., p. 13 and p. 118

<sup>3</sup> Ibid., p. 18

<sup>4</sup> Ibid., p. 18 and p. 375

<sup>5</sup> Ibid., p. 369, p. 370, p. 381, p. 383 and p. 384

<sup>6</sup> Ibid., p. 338, p. 353, p. 371, p. 337 and 473

<sup>7</sup> Ibid., p. 379

<sup>8</sup> Ibid., p. 364



another work, al-‘Aqīdah al-Nizāmiyyah, it appears that the powerful and capable person meant by al-Juwaynī in al-Ghiyāthī is Nizām al-Mulk, the second Saljūq chief wazīr for the ruler, Alp Arslān and the only wazīr of his son, Malik Shah in whose reigns al-Juwaynī lived, as has been discussed earlier. The following are the grounds for this suggestion.

- (i) As has been established in the Introduction, al-Ghiyāthī was written for and addressed to Nizām al-Mulk.<sup>9</sup> The capable and powerful person whom al-Juwaynī mentions in al-Ghiyāthī is the addressee of his writings. For example, he says:

"Go ahead oh Sadr al-Zamān. Do not delay for what God has prepared for you (since a long time ago)."<sup>10</sup>

Therefore, the capable and powerful person who is meant by al-Juwaynī is Nizām al-Mulk.

- (ii) The person is the one who holds authority in the Saljūq government when the battle of Manzikert between the Saljūqs and the

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<sup>9</sup> See Introduction, pp. 26 - 29

<sup>10</sup> Ibid., p. 338

Byzantine Emperor Romanus Diogenes, occurred in 463 A.H./1071 C.E.. The possibility of that person would be only either Nizām al-Mulk as the wazīr of Alp Arslān, the Sultān. However, it is understood from the du'ā' of al-Juwaynī in al-Ghiyāthī:

"May God bless his soul with His grace"<sup>11</sup>

which is meant for Alp Arslān, that Alp Arslān had died before this book was written.

Therefore, the advice and suggestions which are given to be executed by that person in the compendium are definitely not addressed to Alp Arslān as he had died. It must be addressed to somebody who was still alive at the time when the compendium was written. It cannot be Malik Shah, the successor of Alp Arslān who became the Saljūq ruler between 465 A.H./1073 - 485 A.H./1093 C.E., on the grounds that Malik Shah had not yet held authority when the battle of Manzikert occurred. The battle of Manzikert did not happen during the reign of Malik Shah. Therefore, the person must be Nizām al-Mulk.

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<sup>11</sup> al-Ghiyāthī(1), p. 347, al-Ghiyāthī(2), p. 253 (Note: these two different editions are based on different manuscripts)

(iii) The person meant by al-Juwaynī was the one who has political power in his hands, possesses capacity and was independent in ruling and defending the country<sup>12</sup> and a writer (yastakhdīm al-sayf wa al-qalam).<sup>13</sup> These attributes all belong to Nizām al-Mulk as al-Subkī says in his Tabaqāt:

"He [Nizām al-Mulk] remained in the wizārah for thirty years and his power was above the sultanate."<sup>14</sup>

It is also reported in al-ʿArāḍah fī al-Hikāyah al-Saljūqiyyah that when Nizām al-Mulk was appointed a wazīr to Alp Arslān, he was given the power to conduct all affairs in the Saljūq government as the report says:

"and he (Alp Arslān) gave him the power (of conducting) all affairs - to make decision, to appoint, to hold, to grant, to delegate and to dismiss"<sup>15</sup>

Nizām al-Mulk is the writer of the well-known

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<sup>12</sup> al-Ghiyāthī(1), pp. 332 - 334

<sup>13</sup> Ibid., p. 333

<sup>14</sup> Subkī's Tabaqāt, vol. 4, p. 316

<sup>15</sup> al-Yazdī, Muḥammad b. Muḥammad b. Muḥammad b. ʿAbdullāh b. al-Nizāmī, ed. ʿAbd al-Naʿīm Muḥammad Ḥasanayn and another, Baghdad, 1979, p. 48



Siyāsat al-Nāmah (Book of Government).<sup>16</sup>

These attributes, therefore, exclude Alp Arslān, Malik Shāh and al-Qā'im as Nizām al-Mulk was more powerful than Alp Arslān and Malik Shah and it is a well-known fact, as early mentioned that after the entrance of the Buyids into Baghdad, the 'Abbāsīd caliphs had lost political power and this included al-Qā'im.<sup>17</sup> Al-Juwaynī himself has a negative attitude towards the 'Abbāsīd caliphs. In this regard al-Juwaynī, as has been discussed before, refused to accept the practice of tawliyat al-'ahd by the 'Abbāsīd caliphs as a legal authority.<sup>18</sup> Al-Juwaynī also downgrades the capacity of the 'Abbasid caliphs as he says:

"They (Saljūq soldiers) eradicated the [negative] impression which is left by the things which could not be done by those who possessed power and strength of the 'Abbāsīd caliphs".<sup>19</sup>

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<sup>16</sup> Cambridge History of Iran, vol. 5, p. 56

<sup>17</sup> See Introduction, p. 16

<sup>18</sup> See Chapter 1, p. 53, see also al-Ghiyāthī(1), p. 139

<sup>19</sup> al-Ghiyāthī(1), p. 345

This second statement supports the suggestion that the person meant by al-Juwaynī is certainly not one of the 'Abbāsīd caliphs.

Also, in Islamic history, Malik Shah was not known as a strong, capable and independent in ruling the country as described by al-Juwaynī in al-Ghiyāthī. When Malik Shah became the Saljūq ruler, he was only eighteen and he died when he was thirty seven.<sup>20</sup> It is understood that Malik Shah was very dependent on Nizām al-Mulk in executing his duties. Nizām al-Mulk was even called by Malik Shah "Father", probably a shortened form of "Father Commander" (or Atabeg, a title given to Nizām al-Mulk by Malik Shah).<sup>21</sup>

None of Alp Arslān, Malik Shāh and al-Qā'im was known as a writer.

Therefore, all these facts would suggests that the person would be Nizām al-Mulk.

(iv) Al-Juwaynī's statements in his al-Ghiyāthī:

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<sup>20</sup> Cambridge History of Iran, vol. 5, p. 67

<sup>21</sup> Ibid., p. 68

- (a) "Whatever duties of the imām (singular of a'immah) as have been explained earlier are delegated (mawkūl) to Ra'y Sadr al-Dīn...."<sup>22</sup>

As has already been pointed, Sadr al-Zamān which is probably the equivalent of Sadr al-Dīn is Nizām al-Mulk.

- (b) "The rules applicable to the imām have been explained and all those rules are applicable to [you] Ra'y Sadr al-Ayyām and Sayyid al-Anām (the Master of the People)"<sup>23</sup>

Sadr al-Ayyām is certainly the equivalent of Sadr al-Zamān.

This indicates that the person meant by al-Juwaynī was not the existing de jure imām, who was recognized by the majority of the Muslims at that time, the 'Abbāsīd caliph, al-Qā'im. Otherwise, al-Juwaynī does not need to make such statement.

(v) Al-Juwaynī states:

"If the execution of the affairs by bughāh

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<sup>22</sup> Ghiyāthī(1), p. 374

<sup>23</sup> Ibid., p. 375



(rebels) with the existence of the imām is legitimate, it is more appropriate that the execution of the affairs by wuzarā' al-Islām (the ministers of Islām) with the vacancy (of the qualified person for the imāmate] should be legitimate"<sup>24</sup>

This probably gives more direct indication that the one whom al-Juwaynī means is one of the wazīrs, i.e. Nizām al-Mulk.

It is undeniable that the rejection of the legitimacy of an 'Abbāsīd caliph by a Sunnite scholar is unusual. The following statement by al-Juwaynī challenging the scholars of his time when he presents his opinion that a fard kifāyah is more appropriate to be given priority than a fard 'ayn<sup>25</sup> and it is obligatory to Nizām al-Mulk to remain in his post<sup>26</sup>, strengthens the above argument:

"I challenge the contemporary scholars to argue what I have explained with evidence. If there is anyone who disagrees with it, be aware of him and of following the opinion of this man..."<sup>27</sup>

This statement indicates that the scholars of his time hold the view which is in contrast to his view or at least, if

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<sup>24</sup> Ibid., p. 375

<sup>25</sup> Ibid., pp. 358 - 359

<sup>26</sup> Ibid., p. 363

<sup>27</sup> Ibid., p. 363

they hold the same view, such view had never been expressed before al-Juwaynī did. Otherwise, why should al-Juwaynī challenge them.

As a powerful and capable person, Niẓām al-Mulk was defended by al-Juwaynī as the de facto imām for the Muslims in his period.

#### 1. Grounds for the Legitimacy of the De Facto Imāmate of Niẓām al-Mulk

According to al-Juwaynī, although Niẓām al-Mulk was not a mujtahid<sup>28</sup> and did not fulfil all the required qualities for the imāmate, his de facto imāmate is still legitimate on the grounds that he was the only one (mutawahhid) who possessed capacity in his time.<sup>29</sup> Explaining the capacity which was possessed by Niẓām al-Mulk, al-Juwaynī says that Niẓām al-Mulk was able to fulfil the needs of the religion of Islām - defending it, looking after the prosperity of the Muslims, purifying the religion from bid'ah, supporting the guided group i.e. the Sunnites and providing security (kafālah) for the orphans.<sup>30</sup> Al-Juwaynī defends Niẓām al-Mulk by explaining the details of

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<sup>28</sup> Ibid., p. 380

<sup>29</sup> Ibid., pp. 332 - 334 and p. 336

<sup>30</sup> Ibid., pp. 334 - 335

his contribution to the Muslims and the country. He says that under the de facto imāmate of Niẓām al-Mulk, the religion of Islām was respected, the territory of Islām was protected, the base of authority was strong, the obedience by the people to him was well established, the support was extended to him, due to his strong power, the rebels and the heretics bowed to his authority, the security of life and wealth of the people and the security for women were guaranteed, the country was prosperous, illegal ways to gain wealth and confiscation of wealth of the people were prohibited and the sources of income of the people were well regulated by the authority. As a conclusion, al-Juwaynī says that compared to the previous periods, the period which was under the de facto imāmate of Niẓām al-Mulk was full of blessing and security.<sup>31</sup>

Al-Juwaynī admits that although there was a lot of blessing and security, the conditions were still not perfect. There were still transgressions of laws and morality which were committed by a small group of soldiers in some parts of the country.<sup>32</sup> However, he justifies the matter on two grounds:

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<sup>31</sup> Ibid., pp. 340 - 343

<sup>32</sup> Ibid., p. 341 and p. 344



- (i) Such transgressions by soldiers are a common phenomenon which occurs everywhere and at all times.<sup>33</sup>
- (ii) If the greatness of the contribution which is made by the soldiers in defending the religion and the territory of Islām from external and internal enemies is compared with the transgressions which are committed by them, the transgressions are insignificant.<sup>34</sup> For the contribution against the external enemy, al-Juwaynī gives an example of the victory achieved in the battle against the Byzantine Emperor (ʿAzīm al-Rūm).<sup>35</sup> In the battle, the Muslim soldiers successfully defeated the Emperor and raised the flag of Islām on the top of the city of Mardin.<sup>36</sup> Due to their contribution, the religion and the country of Islām were put in the high position in the eyes of the world (al-asqāʿ al-qasbah).<sup>37</sup> For the

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<sup>33</sup> Ibid., p. 341

<sup>34</sup> Ibid., p. 345

<sup>35</sup> The battle which is meant by al-Juwaynī here is the Battle of Malazkird (Manzikert) in 463 A.H./1071 C.E. against Emperor Rumanos Diogenes. See al-Ghiyāthī(1), p. 344)

<sup>36</sup> Mardin is a great city on the top of the hill located in southern part of Turkey (See al-Ghiyāthī(1), 344)

<sup>37</sup> Ibid., pp. 344 - 345

contribution against the internal enemy, al-Juwaynī says that these soldiers have successfully fought against bid'ah, uprooted the base of Karmatians (al-Qarāmiṭah)<sup>38</sup> from their area (diyārihim), eliminated the heretics (al-zanādiqah) and other deviating groups completely, and achieved some other things which have not been achieved by the Abbasid caliphs.<sup>39</sup>

In defending the legitimacy of the de facto imāmate of Nizām al-Mulk, after presenting his argument, al-Juwaynī ends his defence with a question:

"If we suppose that there is a period when one to whom the people can make their complaint does not exist and the people (al-khawāss wa al-'awāmm) are not controlled by any powerful authority (battāssh qawwām), is such a period nearer to the true path and stability (intizām) than a period in which the rebels are controlled and the people are protected by the soldiers with power beside their commission of insignificant number of transgressions and at the same time they uphold the true religion and firmly stand against the unbelievers?",

a remark:

"One who requires a period which is pure and safe from any find dust (al-'aqzā') and muddiness (al-'akdār),

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<sup>38</sup> The Karmatians (al-Qarāmiṭah) is a subsect of the Shī'ite. They are also called the Seveners (al-Sab'īyyah) or the Bāṭinites (al-Bāṭiniyyah) (See EI(S), p. 179)

<sup>39</sup> Ibid., p. 345

is trying to find something impossible"<sup>40</sup>

and a verse of a poem:

"One who asks for fire to be lighted in water is against nature"<sup>41</sup>

In another statement, al-Juwaynī says:

"If all human beings are exposed to committing mistakes which cannot be avoided, the transgressions which are committed by the soldiers are similar to a natural disaster (āfah samāwiyyah) which cannot be avoided."

From the above question, remark, verse of the poem and statement, it is clearly understood that what al-Juwaynī means is that:

- (i) One should choose the lesser of two evils. In this case, it is clear that having an imām who upholds and defends the religion of Islām with the transgressions of the laws and morality by his soldiers is less evil than not having an imām at all.
- (ii) The transgressions of laws and morality by the soldiers are unavoidable at any place or any

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<sup>40</sup> Ibid., p. 351

<sup>41</sup> Ibid.



time. Therefore, this issue should not affect the legitimacy of the de facto imāmate of Niẓām al-Mulk.

Also, to support the legitimacy of the de facto imāmate of Niẓām al-Mulk, al-Juwaynī says that the duty of governing which is carried out by Niẓām al-Mulk is an obligatory duty in Islām. To support his opinion, al-Juwaynī argues that if saving a single life (al-rajul al-wāhid) is obligatory on every Muslim, it is more appropriate (awlā) that saving the religion of Islām also be obligatory.<sup>42</sup>

Establishing the imāmate or authority in the Islamic territory is an obligation to protect the interests (istislāh) of the Muslims. By having the imām or authority, weapons and force may be used by the imām or the one who possesses the authority in protecting the interests of the Muslims. Individual Muslims are not permitted to use weapons or force by themselves without any supervision of an imām or the authority in protecting the interests of the Muslims in the Islamic land, as afore-mentioned.<sup>43</sup> The use of weapons or force in the Islamic land is only entrusted to the authority. The reason for this rule is that the use

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<sup>42</sup> Ibid., p. 335

<sup>43</sup> See Chapter 4, p. 175

of weapons or force by individuals would lead to conflict among Muslims. Causing conflict among Muslims is prohibited. [Therefore, any means which would lead to a prohibited thing is prohibited].<sup>44</sup>

As to the function of the election of the imām among those qualified persons to avoid conflict between people, al-Juwaynī says that due to the uniqueness (tawahhud) of Nizām al-Mulk who is the only person who possesses capacity with power and supporters, the above function has been fulfilled by Nizām al-Mulk.<sup>45</sup>

## 2. Rules Applicable to Nizām al-Mulk as the Legitimate De Facto Imām

After proving the legitimacy of the de facto imāmate of Nizām al-Mulk, al-Juwaynī proceeds with some other rules which should be applicable to Nizām al-Mulk as the legitimate de facto imām of the Muslims for his time. The rules are:

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<sup>44</sup> Ibid., pp 335 - 336

<sup>45</sup> Ibid., pp. 337 - 338, Another possible grounds for the legitimacy of the de facto imāmate of Nizām al-Mulk which is not explicitly mentioned by al-Juwaynī but can be deduced from the political background in which al-Juwaynī lived is that the <sup>c</sup>Abbāsīd Caliph who was supposed to be the imām for the Muslims at that time had lost power.

## 2.1. Nizām al-Mulk is Prohibited from Resigning from His Post

As the legitimate de facto imām of the Muslims for his time, according to al-Juwaynī, it is not permissible for Nizām al-Mulk to resign from his post as a wazīr even to seclude himself to worship God. The grounds for this rule is that he was the only person who possesses the capacity to occupy the post of the imāmate of the Muslims for his time.<sup>46</sup>

To support this rule, al-Juwaynī presents a long defence for Nizām al-Mulk. Beside his saying that Nizām al-Mulk had no comparison with anybody in his time in terms of possessing the capacity for the imāmate, al-Juwaynī also says that Nizām al-Mulk was the only one who is capable of protecting the religion of God, supervising the performance of the religious ceremonies (sha'ā'ir al-dīn) in all parts of the country, preventing disaster from bid'ah with firm attitude (al-ra'y al-thāqib) without causing chaos (fitnah) and harm, overcoming dangers faced by the people tactfully (bi luṭf), striving day and night in listening and solving people's problems without getting bored and taking care of the mosque, gatherings (majālis) and schools. Besides, Nizām al-Mulk also respects (yata'ātaf) the scholars

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<sup>46</sup> Ibid., pp. 355 - 358



throughout the country.<sup>47</sup>

2.2. It is a Personal Duty of Nizām al-Mulk to Perform  
His Duty as the Legitimate De Facto Imām of the  
Muslims for His time

According to al-Juwaynī, due to the uniqueness of Nizām al-Mulk as the only person who possessing the capacity for the imāmate of the Muslims in his time, performing his duty as the imām becomes a personal duty on him.<sup>48</sup>

To support this rule, al-Juwaynī draws an analogy with three other sharī'ah legal rules:

- (i) Originally, jihād is a public duty on every capable Muslim. However, when a soldier (ahl al-qitāl) is already in a battle line against the enemy even though the number of the enemy soldiers is less than half of the number of the Muslim soldiers, the status of public duty which is due on him to perform jihād changes to the status of personal duty. In this case, it is a personal duty

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<sup>47</sup> Ibid., p. 357

<sup>48</sup> Ibid., pp. 362 - 363

on the soldier to continue to perform the jihād.<sup>49</sup>

(ii) Originally, a man is not permitted to go to jihād without permission from his parents. However, if he disobeys his parents and goes to jihād without their permission, once he has become involved in a battle, it is not permitted for him to withdraw from it.<sup>50</sup>

(iii) Originally, a slave is not permitted to go to jihād without permission from his master. However, if he disobeys his master and goes to jihād, once he is involved in the battle, he has to stay until the battle ends [or he dies].<sup>51</sup>

Based on these three rules, al-Juwaynī says that if jihād in the three sharī'ah legal rules becomes personal duty for the soldiers, the disobedient son and the disobedient slave despite the insignificant effect on the Muslims and despite their disobedience, it is more appropriate that Nizām al-Mulk remain in his post to protect the Muslims and the country of Islām and therefore, it becomes a personal duty for him, on the grounds that if

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<sup>49</sup> Ibid., p. 360

<sup>50</sup> Ibid., p. 360

<sup>51</sup> Ibid., p. 361

he left his post, the Muslims, the religion and the Country of Islām would suffer from a disaster which would be difficult to be overcome.<sup>52</sup>

### 2.3. It is Prohibited to Nizām al-Mulk to Perform Hajj (Pilgrimage) during the Tenancy of His Post

As afore-mentioned, although al-Juwaynī says that the security of the Muslims and the country of Islām is under protection, he does not deny that the rebels and the heretics still exist. Due to this fact, the Muslims and the country of Islām still need an imām to protect them from their internal and external enemies.

Based on this reason and the fact that Nizām al-Mulk is the only person who possesses capacity for the post of the imāmate in his time, al-Juwaynī says that it is prohibited on Nizām al-Mulk to go to Makkah to perform hajj and leave the affairs of the Muslims without an imām.<sup>53</sup>

To support this rule, al-Juwaynī also draws an analogy with another sharī'ah legal rule. Al-Juwaynī says that an act of worship is not considered as a way to be close to God (qurbah) only by fulfilling all its essential elements

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<sup>52</sup> Ibid., pp. 361 - 364

<sup>53</sup> Ibid., p. 364



('a'yānihā wa dhawātihā), but it should also be performed in a period which is defined by the rules of God (qadāyā amr Allāh). Therefore, a prayer which is performed outside its prescribed period, even though it is performed in the best way, is not valid and is considered as a prohibited act (munkar).<sup>54</sup>

The same rule is applicable to hajj. Although all essential elements are fulfilled but if the performance of the hajj by any person would lead to harm or danger to himself or a group of Muslims, the performance of the hajj by the person is prohibited. This rule is agreed upon by all Muslims. Anyone who thinks that his hajj would cause harm himself or a group of Muslims, as above-mentioned, should delay his hajj until a time which is completely safe from any harm or danger.<sup>55</sup>

Based on this rule, al-Juwaynī argues that if in such a situation, the hajj of an ordinary person becomes prohibited, it is more appropriate that the hajj of Nizām al-Mulk, as the de facto imām of the Muslims who conducts the affairs of the Muslims and protects the religion of Islām to be prohibited, on the grounds, that his leaving to

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<sup>54</sup> Ibid., p. 365

<sup>55</sup> Ibid., pp. 366 - 367

go on hajj would cause great disasters to the Muslims.<sup>56</sup>

According to al-Juwaynī, Nizām al-Mulk is only permitted to perform his hajj when the country enjoys prosperity and adequate security from any internal and external threat.<sup>57</sup>

#### 2.4. The Duties of Nizām al-Mulk

As to the duties of Nizām al-Mulk, al-Juwaynī says that as Nizām al-Mulk is a legitimate de facto imām who functions as the qualified imām in his time, all the duties of the imām which have been mentioned earlier are entrusted (mawkūl) to Nizām al-Mulk.<sup>58</sup>

However, when discussing the duties of Nizām al-Mulk, al-Juwaynī stresses three duties which he considers as urgent and necessary ones which must be carried out by Nizām al-Mulk during his time. The three duties of Nizām al-Mulk which are stressed by al-Juwaynī are as follows:

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<sup>56</sup> Ibid., pp. 370 - 371

<sup>57</sup> Ibid.

<sup>58</sup> Ibid., p. 374 and p. 375

#### 2.4.1. Be Informed about What is Happening In the Country and Its Conditions

It is an important duty of Nizām al-Mulk to be informed about what is happening throughout the country, and its condition. The reason for this principle is that conducting the affairs of the subjects involves investigation (al-ittila') of the difficult and secret matters (al-ghawāmiḍ wa al-khafāyā). If the imām is not well-informed about what is happening in the country, injustice among the people, cheating, disgraceful acts (al-makhāzī wa al-fadā'ih), refusal to fulfil financial duties to bayt al-māl, stealing, rebellion and other evils may spread.<sup>59</sup> As far as remote regions are concerned, Nizām al-Mulk should employ a number of trustworthy people as his informers to observe and to report to him secretly about what is happening there. When the evil people (ahl al-khabal wa al-fasād) know about the fact that they are under observation of Nizām al-Mulk, they would obey him and follow the true path whether voluntarily or by force. By having such intelligence service, the security of the country will be stable.<sup>60</sup> Wakefulness (al-tayaqquz) and being well-informed (al-khibrah) are the foundations of

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<sup>59</sup> Ibid., pp. 377 - 378

<sup>60</sup> Ibid., pp. 378 -379



government (usus al-iyālah wa qā'idat al-imrah).<sup>61</sup>

#### 2.4.2. To Consult Scholars

According to al-Juwaynī, because Niẓām al-Mulk was not a mujtahid, in performing his duties as the de facto imām of the Muslims, he had to consult the scholars. The reason for this rule is that, as mentioned earlier, when the imām is not a mujtahid, the people who possess authority (ashāb al-'amr) are the scholars. The imām who possesses the power is commanded to follow the rules (marāsīm) made by the scholars. It is different if the imām is a mujtahid. If the imām is a mujtahid, he should not follow anyone. In contrast, he is the one who should be followed by everyone.<sup>62</sup>

Regarding this rule, al-Juwaynī remarks that if the ruler of the time (sultān al-zaman) is not a mujtahid, the scholars are the ones who should be followed and the power of execution remains in the hands of the ruler. In this situation, the scholar of the time (ʿālim al-zamān) is like a prophet of the time and the ruler is like a king.<sup>63</sup>

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<sup>61</sup> Ibid., p. 377

<sup>62</sup> Ibid., pp. 379 - 380

<sup>63</sup> Ibid., p. 380

When the prophets are absent, the scholars should replace their position. When the Messengers were sent by God, they were expected to change the laws (ahkām) by cancelling (naskh) the previous laws. Therefore, when the scholars make rules through their fatwā, their fatwā is considered as among the rules of God (min qadāyā awāmirillāh).<sup>64</sup> It is understood that the rules of the scholars should be implemented by the imām who is not a mujtahid.

#### 2.4.3. Be Wakeful (al-Tayaqquz) about Religious Dissension

It is an important duty of Nizām al-Mulk to protect the people from any destruction which may be caused by any religious dissension all the time.<sup>65</sup>

Al-Juwaynī reminds Nizām al-Mulk that although religious dissension does not occur during his time, it had happened in the past when heretics (al-zanādiqah) had once spread in the country of Islām; they made jokes of the religion of Islām.<sup>66</sup> However, al-Juwaynī does not describe any specific period in which the case occurred.

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid., p. 381

<sup>66</sup> Ibid.

Al-Juwaynī also reminds Nizām al-Mulk that the greatest element of religious dissension in his time is the dissolution of piety from the Muslim people. They follow their desires and are more inclined to worldly interests. If steps are not taken to overcome this phenomenon, it would lead to a great disaster to the Muslims and the religion of Islam.<sup>67</sup>

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<sup>67</sup> Ibid., pp. 382 - 383



## CHAPTER EIGHT

### AL-JUWAYNĪ'S CONTRIBUTION TO ISLAMIC POLITICAL THOUGHT ON THE IMĀMATE

Probably, the best method of showing al-Juwaynī's contribution to Islamic political thought on the imāmate is by investigating the origin of al-Juwaynī's thought on the subject and making a comparison between the doctrine of the imāmate of the scholars to whose works al-Juwaynī refers and the doctrine of the imāmate of the scholars who are influenced by al-Juwaynī's own doctrine on the subject. From al-Juwaynī's writings on the imāmate, the scholars to whom he frequently refers are al-Shāfi'ī, al-Ash'arī, al-Bāqillānī and Abū Ishāq al-Isfarāyīnī. The names of these scholars are explicitly mentioned in various places in his writings on the imāmate, especially in al-Ghiyāthī. As to the scholars who are influenced by al-Juwaynī, it is well-known that al-Ghazālī is the most prominent scholar among al-Juwaynī's students. Therefore, to show al-Juwaynī's contribution to Islamic political thought on the imāmate and to show the chain of thought among traditional Muslim scholars on the topic, an investigation on the origin of al-Juwaynī's thought on the imāmate and a comparison between the thought of the scholars to whom al-Juwaynī refers and the thought of the scholars who are influenced by al-Juwaynī on the subject will be made.

However, for the purpose of writing this thesis, the comparison which will be made will be confined to the two most prominent scholars who preceded al-Juwaynī, al-Ash'arī and al-Bāqillānī and the immediate most prominent scholar who succeeded him, al-Ghazālī. Therefore, the thought of al-Shāfi'ī, al-Baghdādī, Abū Ishāq al-Isfarāyīnī, al-Māwardī and Abū Ya'la on the subject are excluded from the discussion in this thesis. Al-Shāfi'ī's is excluded because his period is far from al-Juwaynī's period. Al-Baghdādī's is excluded because al-Juwaynī never mentions in his writings that he had ever referred to al-Baghdādī's works. Abū Ishāq al-Isfarāyīnī's is excluded because there is no work written by him available to be referred to for the comparison. Al-Māwardī's is excluded because al-Juwaynī does not consider that al-Māwardī's writing on the imāmate is original. Al-Juwaynī even criticizes that al-Māwardī's writings in al-Abkām al-Sultāniyyah on the imāmate as plagiarism.<sup>1</sup> Abū Ya'lā's is excluded because of two reasons: Firstly, his writings on the topics were only a copy with some modifications from al-Māwardī's writings. Secondly, it seems that there is no reference made by al-Juwaynī to his writings.

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<sup>1</sup> See al-Ghiyāthī (1), pp. 141 - 142

(a) The Origin of al-Juwaynī's Thought on the Imāmate

(i) Al-Ash'arī's Doctrine of the Imāmate

Al-Ash'arī is considered as the founder of Ash'arism.<sup>2</sup> For the purpose of the study of al-Ash'arī's doctrine of the imāmate, reference will be made to his Kitāb al-Lumā' fī al-Radd 'alā Ahl al-Zaygh wa al-Bida' (al-Lumā'), Kitāb al-Ibānah (al-Ibānah) and Maqālāt al-Islāmiyyīn 'an Uṣūl al-Diyānah wa Ikhtilāf al-Muṣallīn (Maqālāt).

Al-Ash'arī's writings on the imāmate in al-Lumā' are brief<sup>3</sup> and only focus on the legitimacy of the imāmate of Abū Bakr and the rejection of the Shi'ite opinion that 'Alī was appointed imām by the Prophet by nass. In proving the legitimacy of Abū Bakr, al-Ash'arī referred to some verses of the Qur'ān<sup>4</sup> and the ijmā' of the Muslims.<sup>5</sup>

In al-Ibānah, al-Ash'arī's writings are also brief<sup>6</sup>

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<sup>2</sup> Watt, W. Montgomery, op cit., p. 105

<sup>3</sup> It only covers 3 pages out of 136 pages of the book. (See al-Lumā', pp. 71 - 74)

<sup>4</sup> The verses which are referred by al-Ash'arī are al-Tawbah (9):83, al-Fath (48):15, al-Fath (48):16 and al-Fath (48):18. For the details of the verses, See note no.38, Chapter 6

<sup>5</sup> al-Lumā', p. 134

<sup>6</sup> It covers only 3 pages out of 74 pages of the book. (See al-Ibānah, pp. 133 - 136)



and covers almost the same contents except that he added two other evidences for the legitimacy of the imāmate of Abū Bakr. The evidences are:

(i) the combination of the verses al-Naḥl (24):55, al-Ḥajj (22):41 and al-Fath (48):18;<sup>7</sup>

(ii) the hadith of the Prophet which says that the period of the four Guided Caliphs would be 30 years;<sup>8</sup>

and a new issue on the political conflicts between the Muslims in the early period i.e. the conflict between 'Alī, Zubayr and 'Ā'ishah and the conflict between 'Alī and Mu'āwiyah. On this latter issue, al-Ash'arī says that all of them were correct as they all were practising ijtihād and they all are qualified mujtahids.<sup>9</sup>

Al-Ash'arī's writings on the imāmate in Maqālāt, as on other topics, are the collection of the opinions of the theological sects, such as the Sunnites, the Shi'ites, the Mu'tazilites and the Khārijites without stating explicitly his own opinion. However, al-Ash'arī's statement in another

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<sup>7</sup> al-Ibānah, p. 71

<sup>8</sup> Ibid., p. 73

<sup>9</sup> Ibid., pp. 73 - 74

part of Maqālāt shows that his opinion is that of the Sunnites.<sup>10</sup> Al-Ash'ari's writings on the imāmate in Maqālāt are also brief but covers more topics compared to his writings in al-Lumā' and al-Ibānah. The writings cover, among the main issues:<sup>11</sup>

- (i) the conflict between 'Alī and Mu'āwiyah;
- (ii) the legitimacy of the four Guided Caliphs;
- (iii) the legitimate method to appoint the imām;
- (iv) the number of ahl al-hall wa al-'aqd;
- (v) the rule regarding the obligation to establish the imāmate;
- (vi) the number of the imām;
- (vii) the possibility of the vacancy of the post of the imāmate;
- (viii) the requirement of the descent from Quraysh for the imām; and
- (ix) the requirement of the best person to be the imām.

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<sup>10</sup> Maqālāt, introduction by editor, p. 24.

<sup>11</sup> See Maqālāt, pp. 141 - 155

(ii) Al-Bāqillānī's Doctrine of the Imāmate

For the purpose of the study of al-Bāqillānī's doctrine of the imāmate, major reference will be made to the following books:

- (i) al-Tamhīd fī al-Radd 'alā al-Mulhidah al-Mu'attilah wa al-Rāfiḍah wa al-Khawārij wa al-Mu'tazilah (al-Tamhīd);
- (ii) al-Insāf (translated by R.J. McCarthy in his unpublished Doctoral thesis "Al-Bāqillānī: The Polemist and Theologian", (University of Oxford, 1951), vol. 2); and
- (iii) al-Manāqib (translated and summarized by R.J. McCarthy in his unpublished Doctoral thesis "Al-Bāqillānī: The Polemist and Theologian" (University of Oxford, 1951), vol. 2)..

Compared to al-Ash'arī's writings on the imāmate, al-Bāqillānī's writings are more profound and cover more topics concerning the imāmate.<sup>12</sup> In addition to the issues discussed by al-Ash'arī in his three works mentioned earlier, al-Bāqillānī adds some other issues. The

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<sup>12</sup> al-Bāqillānī's writings on the imāmate cover 63 pages out of 241 pages of his al-Tamhīd.



additional issues are the purpose of the establishment of the imāmate and the circumstances which require the desposal of the imām.<sup>13</sup> Besides, other than the issues which have been discussed by al-Ash'arī, al-Bāqillānī also contributes discussion on more issues to Ash'ari's doctrine. Among other main issues which al-Bāqillānī adds to al-Ash'arī's doctrine are:

- (i) the requirement of the attendance of the witnesses during the making of the contract of the imāmate;<sup>14</sup>
- (ii) the denial of the right of the ummah to depose the imām on their own will;<sup>15</sup>
- (iii) the denial of the right of any of the members of ahl al-hall wa al-'aqd to appoint himself as the imām;<sup>16</sup>
- (iv) the requirement of bravery, knowledge in warfare and the defence of the country,<sup>17</sup> status of

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<sup>13</sup> See al-Tamhīd, pp. 186 - 187

<sup>14</sup> See Ibid., p. 179

<sup>15</sup> See Ibid.

<sup>16</sup> See Ibid.

<sup>17</sup> See Ibid., p. 183

ijtihād and piety<sup>18</sup> for the imām;

(v) the rejection of the requirement of infallibility for the imām;<sup>19</sup>

(vi) the purposes of the establishment of the imāmate i.e. to administer the army (tadbīr al-jaysh), to build frontier posts (sidd al-thughūr), to deter injustice, to uphold justice, to implement hudūd, to distribute al-fay' among the Muslims;<sup>20</sup> and

(vii) the circumstances which require the deposal of the imām, i.e. apostacy, abandoning prayers and calling for the abandoning of them, fisq, committing injustice, madness, deafness, muteness, old age and imprisonment in war.

Besides, on the legitimacy of the four Guided Caliphs, in contrast to the explanation by al-Ash'arī which is brief, al-Bāqillānī elaborates the issue at great length.<sup>21</sup>

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<sup>18</sup> al-Insāf, p. 253

<sup>19</sup> al-Tamhīd, pp. 184 - 185

<sup>20</sup> See Ibid., pp. 185 - 186

<sup>21</sup> Out of 63 pages of al-Bāqillānī's writings on the imāmate in al-Tamhīd, 54 pages are allocated for elaborating the legitimacy of the four Guided Caliphs (See pp. 187 - 241)

As to the relationship between al-Bāqillānī and al-Ash'arī , it is worth mentioning here that al-Bāqillānī played an important and significant role, by lecturing, dictation and writing, in establishing and popularizing Ash'arism.<sup>22</sup> In his teaching, al-Bāqillānī used al-Lumā' of al-Ash'arī as a basic text.<sup>23</sup> Al-Bāqillānī also depends largely on the works of al-Ash'arī in producing his own works.<sup>24</sup> Al-Bāqillānī's book Sharh al-Lumā' is most probably an elaboration to al-Ash'arī's al-Lumā'.<sup>25</sup> It is probable that there is no work of the Ash'arite scholars produced within the period between al-Ash'arī and al-Bāqillānī.<sup>26</sup> Perhaps, al-Bāqillānī's stance on the issue of the conflict between 'Alī and Ma'āwiyah is the clearest evidence for the closeness of the relationship between his doctrine and al-Ash'arī's. The stance of both of them is that in the conflict, both 'Alī and Mu'āwiyah were correct as they were practising ijtihād.<sup>27</sup>

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<sup>22</sup> See McCarthy, R.J., "Al-Bāqillānī: The Polemist and Theologian", vol. 1, p. 315

<sup>23</sup> Ibish, Yusuf, Political Doctrine of al-Bāqillānī, Beirut, 1966, p. 18 citing Ibn Farhūn, al-Dibāj, Cairo, 1911, pp. 267 - 268

<sup>24</sup> Ibid., pp. 315 - 316

<sup>25</sup> Ibid., p. 28

<sup>26</sup> R.J. McCarthy, op. cit., p. 316

<sup>27</sup> See al-Insāf, p. 20, al-Ibānah, pp. 71 - 74



(b) Al-Juwaynī's Contribution to Islamic Political Thought  
on the Imāmate

Compared to the works on the imāmate by al-Ash'arī and al-Bāqillānī, al-Juwaynī's works on the same subject are more extensive and more profound.<sup>28</sup> Apart from the issues of the imāmate which had been discussed by al-Ash'arī and al-Bāqillānī, al-Juwaynī, in his works, as we have already seen, adds more issues and formulates more rules. The following are among the issues and the rules which al-Juwaynī adds:

- (i) The definition of the imāmate.<sup>29</sup>
- (ii) The qualities of ahl al-hall wa al-'aqq i.e. maleness, free in status, knowledge, Islām, possession of power and piety.<sup>30</sup>
- (iii) A discussion of the validity of the appointment by a father of his son as his succeeding imām.<sup>31</sup>
- (iv) The duties of the imām. This topic is elaborated by al-Juwaynī systematically, in detail and at

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<sup>28</sup> Al-Juwaynī's writing on the imāmate in al-Ghiyāthī alone covers 371 pages. The first book of his compendium is named "the book of the imāmate" (Kitāb al-Imāmah), (See al-Ghiyāthī(1), pp. 22 - 393

<sup>29</sup> See al-Ghiyāthī(1), p. 22, see also Chapter 1, p. 24

<sup>30</sup> See al-Ghiyāthī(1), pp. 62 - 66, see also Chapter 1, pp. 42 - 48

<sup>31</sup> See al-Ghiyāthī(1), pp. 137 - 139, see also Chapter 1, pp. 57 - 58

great length.<sup>32</sup> The duties of the imām are not discussed by al-Ash'arī. They are also not discussed by al-Bāqillānī directly. In al-Bāqillānī's writings, the duties of the imām are discussed indirectly, generally and briefly under the topic of the purpose of the imāmate.<sup>33</sup>

- (v) The number of the qualities required for the imām. It can be understood from Maqālāt that al-Ash'arī only requires that the imām must be of decent from Quraysh and the best person of the Muslims.<sup>34</sup> Al-Bāqillānī added four more qualities apart from the qualities which have been mentioned by al-Ash'arī i.e. bravery, knowledge in warfare and the defence of the country, status of ijtihād and piety.<sup>35</sup> Apart from the above-mentioned qualities, al-Juwaynī adds nine more qualities i.e. ability to see, ability to hear, ability to speak, loss of limb and organ which jeopardises the performance of the duties of the imāmate, maleness, free status, Islam, sound mind and of the age of

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<sup>32</sup> Out of 305 pages of The Book of the Imāmate in his al-Ghiyāthī, 125 pages are allocated for discussing the duties of the imām. (See al-Ghiyāthī (1), pp. 180 - 305), see also Chapter 4, pp. 143 - 180

<sup>33</sup> See al-Tamhīd, pp. 185 - 186

<sup>34</sup> See Maqālāt, pp. 151 - 152

<sup>35</sup> See al-Tamhīd, p. 183, al-Insāf, p. 253

majority.<sup>36</sup>

(vi) The number of circumstances which require the imām to be deposed. This topic is not discussed by al-Ash'arī in any of his books which are referred. Al-Bāqillānī mentions eight circumstances as discussed earlier i.e. apostacy, abandoning prayers and calling for the abandoning of them, fisq, committing injustice, madness, deafness, muteness, old age and imprisonment in a war. Al-Juwaynī, in his writings, mentions ten circumstances which require the deposal of the imām i.e. apostacy, madness or mental disorder, blindness, deafness, dumbness, defect of organ or limb which jeopardises the performance of the duties of the imāmate, fisq, imprisonment in a war, loss of obedience and chronic illness.<sup>37</sup> It is also worth mentioning here that different from his predecessors, al-Juwaynī differentiates between the circumstances which require dismissal and the circumstances which require disqualification.<sup>38</sup> In discussing fisq, al-Juwaynī also differentiates between the fisq

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<sup>36</sup> See al-Ghiyāthi(1), pp. 76 - 91, see also Chapter 2, pp. 79 - 81, pp. 85 - 87

<sup>37</sup> See al-Ghiyāthi(1), pp. 98 - 126, see also Chapter 3, pp. 117 - 130

<sup>38</sup> See Ibid., p. 98, see also Chapter 3, pp. 115 - 131



which requires dismissal and the fisq which does not require either dismissal or disqualification<sup>39</sup>

(vii) Rules regarding the dismissal of the imām and the remedies which should be taken by the Muslims if the dismissed or disqualified imām refuses to step down from his post. These two topics are not discussed by either al-Ash'arī or al-Bāqillānī.

As to the relationship between al-Juwaynī and al-Ash'arī and al-Bāqillānī, al-Ash'arī and al-Bāqillānī are al-Juwaynī's indirect teachers as mentioned earlier.<sup>40</sup> Both died before al-Juwaynī was born. However, al-Juwaynī studied from them through their books.<sup>41</sup> Al-Ash'arī is described by al-Juwaynī as "our scholar" (shaykhunā).<sup>42</sup> As to the relationship between al-Juwaynī's doctrine of the imāmate with al-Bāqillānī's doctrine on the same subject, al-Juwaynī's own statement as mentioned in Subki's Tabaqāt<sup>43</sup> shows that the influence of al-Bāqillānī's

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<sup>39</sup> Ibid., pp. 120 - 122, see also Chapter 3, pp. 121 - 127

<sup>40</sup> See Chapter 1, p. 6

<sup>41</sup> See Ibid.

<sup>42</sup> al-Ghiyāthī(1), p. 175, al-Shāmil, p. 6

<sup>43</sup> See Ibid., see also Chapter 1, p. 7

doctrine of the imāmate on al-Juwaynī is obvious.

However, although al-Juwaynī is an Ash'arite scholar, not all doctrines of his Ash'arite predecessors such as al-Ash'arī himself and al-Bāqillānī are accepted by al-Juwaynī. In many issues, al-Juwaynī disagrees with al-Ash'arī and al-Bāqillānī. The following are among the main issues in which al-Juwaynī disagrees with them:

- (i) According to al-Ash'arī, the number of ahl al-hall wa al-'aqd required for the appointment of the imām is one with a condition that the person must be a mujtahid and pious.<sup>44</sup> According to al-Bāqillānī, the number of ahl al-hall wa al-'aqd is one without any condition.<sup>45</sup> Al-Juwaynī agrees on the number of ahl al-hall wa al-'aqd with al-Ash'arī and al-Bāqillānī but he disagrees with al-Ash'arī's requirement of the status of ijtihād and the lack of condition which is according to al-Bāqillānī. Al-Juwaynī requires that, among others, the person must have power or capable of providing power to the

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<sup>44</sup> Usūl al-Dīn, pp. 280 - 281, this quotation is probably from Maqālāt, p. 149

<sup>45</sup> al-Tamhīd, p. 178

imām.<sup>46</sup>

(ii) Al-Bāqillānī bases his argument on the ḥadīth "the imāms should be from Quraysh" to prove the validity of the requirement of the descent from Quraysh for the imām.<sup>47</sup> Although al-Juwaynī used to base his argument on the same ḥadīth in his early work<sup>48</sup> on the imāmate, in his later work<sup>49</sup>, al-Juwaynī rejects the ḥadīth as a valid evidence for the requirement of the descent from Quraysh for the imāmate because he argues that the ḥadīth is ahād (reported by one person). Instead, al-Juwaynī bases his argument on imā.<sup>50</sup>

(iii) In discussing the circumstances which require the dismissal of the imām, al-Bāqillānī does not include blindness but he includes old age as one of the circumstances.<sup>51</sup> There is no

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<sup>46</sup> al-Ghiyāthī(1), pp. 70 - 71, See other requirements by al-Juwaynī in al-Ghiyāthī(1), pp. 62 - 66, see also Chapter 1, pp. 46 - 48

<sup>47</sup> al-Tamhīd, p. 182, al-Insāf, p. 253

<sup>48</sup> Lam<sup>c</sup> al-Adillah, p. 116

<sup>49</sup> al-Ghiyāthī(1), p. 80, p. 313

<sup>50</sup> Lam<sup>c</sup> al-Adillah, p. 116, al-Ghiyāthī(1), p. 80, p. 313, see also Chapter 2, pp. 83 - 85

<sup>51</sup> al-Tamhīd, p. 186



indication in al-Bāqillānī's writings that he differentiates between dismissal and disqualification as does al-Juwaynī.

(c) The Influence of al-Juwaynī on al-Ghazālī

Al-Juwaynī's doctrine of the imāmate has left some influence on the Muslim scholars<sup>52</sup> who came after him such as al-Ghazālī, al-Shāṭibī<sup>53</sup>, al-Āmidī<sup>54</sup>, Ibn al-ʿArabī<sup>55</sup>, al-Nawāwī<sup>56</sup>, Ibn Taymiyyah<sup>57</sup>, Ibn Qayyim<sup>58</sup>, al-Subkī<sup>59</sup>, Ibn Khaldūn<sup>60</sup> and al-Suyūṭī<sup>61</sup>. However, for the purpose of

<sup>52</sup> See details of the discussion on al-Juwaynī's influence on his succeeding scholars by ʿAbd al-ʿAzīm al-Dīb in his introduction of his edition of al-Ghiyāthi(1), pp. 140 - 151 and by Fu'ād ʿAbd al-Munʿim Aḥmad and Muṣṭafā Ḥilmī in their introduction to their edition of al-Ghiyāthi(2), pp. 29 mim - 32 mim.

<sup>53</sup> He is Abū Muḥammad al-Qāsim b. Farraḥ b. Khalaf b. Aḥmad al-Ruʿaynī, d. 590 A.H./1194 C.E. (EI(1), vol. 4, p. 377)

<sup>54</sup> He is ʿAlī b. Abī ʿAlīb. Muḥammad al-Thaʿlabī Sayf al-Dīn, d. 631 A.H./1233 C.E. (EI(1), vol. 1, p. 326)

<sup>55</sup> He is Abū Bakr Muḥammad b. ʿAlī Muḥī al-Dīn al-Hātimī al-Ṭāʾī al-Andalusī, d. 638 A.H./1240 C.E. (EI(S), p. 146)

<sup>56</sup> He is Muḥī al-Dīn Abū Zakariyyā Yaḥyā al-Ḥizāmī al-Dimashqī, d. 676 A.H./1277 C.E. (EI(S), p. 444)

<sup>57</sup> He is Taqī al-Dīn Abū al-ʿAbbās Aḥmad b. ʿAbd al-Ḥalīm b. al-Salām b. ʿAbdullah b. Muḥammad, d. 728 A.H./1328 C.E. (EI(S), p. 151)

<sup>58</sup> He is Shams al-Dīn Abū ʿAbdullah Muḥammad b. Abū Bakr, d. 751 A.H./1350 C.E. (EI(S), p. 149)

<sup>59</sup> He is Taqī al-Dīn Abū al-Ḥasan ʿAlī, d. 756 A.H./1355 C.E. (EI(1), vol. 4, p. 493)

<sup>60</sup> He is ʿAbd al-Raḥmān ibn Muḥammad, d. 808 A.H./1406 C.E. (EI(C), p. 171)

writing this thesis, a study will only be made on al-Juwaynī's influence on al-Ghazālī, al-Juwaynī's most prominent student. For the purpose of this study, major reference will be made to the following materials:

- (i) Fadā'ih al-Bāṭiniyyah wa Fadā'il al-Mustazhiriyyah (Fadā'ih);
- (ii) Kitāb al-Iqtisād fī al-I'tiqād (al-Iqtisād).

By comparing al-Juwaynī's writings with al-Ghazālī's writings on the imāmate, it is found that, in general, in terms of the issues discussed, al-Juwaynī's writings are more comprehensive and in terms of elaboration, al-Juwaynī's writings are more profound. A lot of the issues discussed by al-Juwaynī are not discussed by al-Ghazālī. The main issues which al-Ghazālī ignored in his writings on the imāmate are:

- (i) the definition of the imāmate;
- (ii) Various qualities of ahl al-hall wa al-'aqq;
- (iii) The rule regarding the appointment of two imāms concurrently;
- (iv) the appointment by a father of his son as his succeeding imām; and

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<sup>61</sup> He is Abū al-Faḍl <sup>c</sup>Abd al-Raḥmān b. Abī Bakr b. Muḥammad Jalāl al-Dīn al-Khudarī al-Shāfi<sup>c</sup>ī, d. 909 A.H./1051 C.E. (EI(1), vol. 4. p. 473)

(v) the circumstances which require the deposal of the imām.

Probably, the reason for ignoring these issues is to avoid repetition in writing. If this is true, this means that al-Ghazālī follows the attitude of his teacher, al-Juwaynī, not to repeat again what has been written by the previous scholars except when he deffers from their views.<sup>62</sup>

According to Fu'ād 'Abd al-Mun'im Aḥmad and Muṣṭafā Ḥilmī, al-Ghazālī's writings on the imāmate in his book al-Iqtisād seems to be a summary of al-Juwaynī's doctrine of the imāmate.<sup>63</sup> The probability of the correctness of this view can be justified by the fact that al-Ghazālī himself had summarized an al-Juwaynī's book al-Burhān on Islamic jurisprudence in his book al-Mankhūl.

From the study of the writings on the imāmate by both of them, it is noticable that al-Ghazālī is very much influenced by his teacher, al-Juwaynī. As suggested by 'Abd al-Mun'im Aḥmad and Muṣṭafā Ḥilmī, al-Ghazālī had studied al-Juwaynī's compendium al-Ghiyāthī by attending al-Juwaynī's study circles (ḥalaqāt) in Naysābūr and had

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<sup>62</sup> See Introduction, p. 10

<sup>63</sup> al-Ghiyāthī(1), p. 16 mīm



mastered al-Juwaynī's doctrine of the imāmate, and composed them again.<sup>64</sup> Perhaps, the following examples can be some evidences to show the influence of al-Juwaynī on al-Ghazalī:

(i) From the time of al-Ash'arī, it seems that al-Juwaynī is the first Ash'arite scholar who states explicitly that the issue of the imāmate is not a theological issue but a legal issue.<sup>65</sup> Such a statement had not been stated by al-Ash'arī, al-Bāqillānī, al-Baghdādī or al-Mawardī. Al-Ghazalī did the same which indicates the influence of his teacher.<sup>66</sup>

(ii) Also from the time of al-Ash'arī, al-Juwaynī was the first Ash'arite scholar to require possession of power and capacity as a quality for the imām.<sup>67</sup> This view is also adopted by al-Ghazālī.<sup>68</sup>

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<sup>64</sup> al-Ghiyāthī(2), p. 15 mīm

<sup>65</sup> al-Ghiyāthī(1), p. 60, al-Irshād, p. 411, Mughīth al-Khalaq, f. 6, see also Chapter 1, pp. 24 - 25

<sup>66</sup> al-Iqtisād, p. 147

<sup>67</sup> al-Ghiyāthī(1), pp. 89 - 91, Lam' al-Adillah, p. 116, al-Irshād, p. 426, see also Chapter 2, pp. 91 - 93

<sup>68</sup> Fadā'ih, pp. 183 - 187

(iii) Different from his Ash'arite predecessors, al-Ash'arī and al-Bāqillānī, al-Juwaynī requires that ahl al-hall wa al-'aqd must possess power. This quality is also required by al-Ghazālī.<sup>69</sup> The influence of al-Juwaynī on al-Ghazālī becomes more obvious when both of them make almost the same statement that it is not the number which counts but the power which is wielded by the imām.<sup>70</sup>

The influence of al-Juwaynī on al-Ghazālī is not only confined to al-Ghazālī's adoption of the rules which are formulated by al-Juwaynī, but also the adoption of the structure of the sentences, terms and words in al-Ghazālī's writings. For example, in discussing the issue of the claim of the Fātimids in Egypt for the post of the imāmate, the structure and words used by al-Ghazālī in his writings are almost similar to al-Juwaynī's.<sup>71</sup> Likewise, the terminology

<sup>69</sup> Fadā'ih, pp. 176 - 177

<sup>70</sup> See al-Ghiyāthi(1), p. 69, Fadā'ih, p.177

<sup>71</sup>

فالوجه في إثبات ما نحاوله في ذلك أن الماضيين مازالوا  
بايجين باختصاص هذا المنصب بقريش ، ولم (؛؛) ينشوف قط أحد  
من غير قريش إلى الإمامة ، [على تمادي الآماد] <sup>(٢)</sup> وتطاول الأزمان ،  
مع العلم بأن ذلك لو كان ممكنا ، لطلبه ذور النجدة والبأس ،  
وتشمر <sup>(١)</sup> في ابتغائه عن ساق الجد أصحاب العدد والعدد ، وقد بلغ

However, although al-Ghazālī is much influenced by his teacher, al-Juwaynī, in the subject of the imāmate, he does not adopt all al-Juwaynī's doctrine. In certain issues, al-Ghazālī differs from al-Juwaynī.

طَلَّابُ الْمَلِكِ فِي انْتِحَاءِ الْاِسْتِعْلَاءِ عَلَى الْبِلَادِ وَالْعِبَادِ أَقْصَى غَايَاتِ  
الاعْتِدَاءِ : وَاقْتَحَمُوا فِي رَوْمٍ مَا يَحَاوِلُونَهُ الْمَهَاوِي وَالْمَعَاظِبُ وَالْمَسَاوِي ،  
وَرَكَبُوا الْأَغْرَارَ وَالْأَخْطَارَ ، وَجَانَبُوا الرِّفَاحِيَّةَ وَالِدَّعَةَ وَالْأَوْطَانَ ،  
فَلَوْ كَانَ إِلَى ادِّعَاءِ الْإِمَامَةِ مَسْلَكٌ ، أَوْ لَهُ مَدْرَكٌ ، لَزَاوَلَهُ مُحَقِّقُونَ ،  
أَوْ مُبْتَغِلُونَ مِنْ غَيْرِ قَرِيشٍ ، وَلَمَّا اشْرَأَبَ لِهَذَا الْمَنْتَسَبِ الْمَارْقُوعُونَ فِي  
فَسْطَاطِ مِصْرَ ، اعْتَزَّوْا أَوْلَا إِلَى شَجَرَةِ النَّبُوَّةِ عَلَى الْاِفْتِرَاءِ ، وَانْتَمَوْا  
إِلَى الْأَدْعِيَاءِ ، وَبَذَلُوا خَرَائِبَ<sup>(١)</sup> الْأَمْوَالِ لِلْكَاذِبِينَ النَّسَابِينَ ، حَتَّى  
أَلْحَقُوهُمْ بِتَسْوِيمِ النَّسَبِ .

(al-Ghiyāth (1), pp. 80 - 81),

الخامسة : نسب

قريش<sup>(١)</sup> لا بد منه لقوله - صلى الله عليه وسلم ! - الأئمة من قريش . واعتبار  
هذا مأخوذ من التوقيف ومن إجماع<sup>(٢)</sup> أهل الأعصار الحالية على أن  
الإمامة ليست إلا في هذا النسب ، ولذلك لم يتصدَّ لطلب<sup>(٣)</sup> الإمامة غير  
قريش في عصر من الأعصار مع شغف الناس بالاستيلاء والاستعلاء وبذلهم  
غاية<sup>(٤)</sup> الجهد والطاقة في الترقى إلى منصب العلاء . ولذلك لما هم المخالفون  
بمصر<sup>(٥)</sup> لطلب هذا الأمر ادَّعَوْا أَوْلَا لأنفسهم الاعتزاء إلى هذا النسب ،  
علماً منهم بأن الخلق متطابقون على اعتقادهم لانهصار الإمامة فيهم .

(Fadā'ih, pp. 180 - 181), for further examples, see al-Ghiyāthi(1), pp. 147 mim - 149 mim, al-Ghiyāthi(2), pp. 14 mim - 16 mim.

<sup>72</sup> Lam<sup>c</sup> al-Adillah, p. 116, al-Irshād, p. 426, Fadā'ih, pp. 182 - 187



In proving the requirement of the descent from Quraysh for the post of the imāmate, al-Juwaynī, in his latest opinion in al-Ghiyāthī, rejects the hadīth "the imāms should be from Quraysh" as a valid evidence. In contrast, al-Ghazālī accepts this hadīth as a valid evidence for the requirement.<sup>73</sup>

Al-Ghazālī also differs from al-Juwaynī in the requirement of the status of ijtihād for the imām. Al-Juwaynī requires that the imām must be a mujtahid while al-Ghazālī does not do so.<sup>74</sup>

Another difference between al-Ghazālī and al-Juwaynī is the classification of the duties of the imām. Al-Juwaynī categorizes the duties of the imām, as discussed earlier, into the duties which are related to worldly affairs and the duties which are related to religious affairs, whereas al-Ghazālī categorizes the duties of the imām into those pertaining to ‘ilm (religious knowledge) scientific (‘ilmiyyah) and practical (‘amaliyyah).<sup>75</sup> The duties pertaining to ‘ilm are:

- (i) to know the purpose of the creation of man;

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<sup>73</sup> Fadā'ih, p. 180

<sup>74</sup> al-Ghiyāthī(1), p. 84, pp. 153 - 154, see also Chapter 2, pp. 89 - 90, al-Irshād, p. 426, Fadā'ih, p. 191

<sup>75</sup> Fadā'ih, p. 195

(ii) to know that piety comes from the heart  
(al-qalb);

(iii) [to know that] the purpose of the caliphate is  
to give benefit to the people (istislāh  
al-khalāq); and

(iv) to know that man has a combination of both the  
character (ṣifāh) of the angel and the animal.<sup>76</sup>

The practical duties of the imām are:

(i) to conduct the duties of the imāmate by  
himself;

(ii) to consult the scholars;

(iii) to take care of those who are in need;

(iv) to avoid extravagance in food and dress;

(v) to know that the acts of worship are not as  
heavy (tayassara) for the one who rule (wālīh);

(vi) [to uphold the principle that] kindness  
(al-rifq) should be dominant over crudeness  
(al-ghalzah) in conducting all affairs;

(vii) [to know that] the most important purpose  
of the imāmate is to seek the favor (ridā)  
of the people through the conformation with  
Islamic rules (shar');

(viii) to know that the danger and the benefit from

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<sup>76</sup> Ibid., pp. 195 - 202

being an imām is great; and

- (ix) to possess a habit of forgiving, conducting himself with gentleness and good morality, and concealing anger.<sup>77</sup>

(d) Notes on the Similarity between the Thought of al-Ash'arī, al-Bāqillānī, al-Juwaynī and al-Ghazālī on the Imāmate

It is felt that the study of al-Juwaynī's contribution to Islamic Political thought on the imāmate would not be completed without mentioning the common attributes between the thoughts of al-Ash'arī, al-Bāqillānī, al-Juwaynī and al-Ghazālī on the same subject i.e. all of them write on the imāmate to defend Sunnism and reject its adversaries such as Shi'ism and Mu'tazilism. As a result, all of them:

- (i) defend the legitimacy of the imāmate of the four Guided Caliphs;<sup>78</sup>
- (ii) reject the appointment of the imām by nass;<sup>79</sup>
- (iii) hold the view that the appointment of the imām

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<sup>77</sup> Ibid., pp. 202 - 224

<sup>78</sup> al-Ibānah, pp. 71 - 74, Maqālāt, p. 144, al-Lumā', pp. 159 - 163, al-Tamhīd, pp. 187 - 239, al-Insāf, pp. 245 - 348, Lam' al-Adillah, p. 114, al-Irshād, pp. 428 - 430, al-Iqtisād, p. 151

<sup>79</sup> Maqālāt, p. 176, al-Tamhīd, p. 178, Lam' al-Adillah, p. 114, al-Irshād, pp. 419 - 423, al-Ghiyāthī(1), p. 37, Fadā'ih, p. 176, pp. 133 - 141, al-Iqtisād, p. 149



must be by the method of election;<sup>80</sup> and

(iv) require that the imām must be of decent from Quraysh.<sup>81</sup>

Perhaps these similarities are the best evidence to show the connection of thought between the above-mentioned scholars.

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<sup>80</sup> Maqālāt, p. 148, al-Tamhīd, p. 178, Lam<sup>c</sup> al-Adillah, p. 115, al-Irshād, p. 423, al-Ghiyāthi(1), p. 43, Fadā'ih, p. 176

<sup>81</sup> Maqālāt, p. 153, al-Tamhīd, p. 181, al-Insāf, p. 253, Manāqib, p. 456, Lam<sup>c</sup> al-Adillah, p. 116, al-Irshād, pp. 426 - 427, al-Ghiyāthi(1), p. 79, Fadā'ih

## CONCLUSION

Al-Juwaynī's doctrine of the imamate can be summarized as follows:

Although the topic of the imamate in his early writings is composed in the books of theology i.e. Lam' al-Adillah and al-Irshād, he explicitly states that the imamate is not a field of theology but it is among the legal fields (furū') or a field of fiqh siyāsī as it is known to the modern Muslim scholars.

The establishment of the imamate as the ideal Islamic political organization is compulsory. The basis for its establishment is ijma' of the ummah. According to al-Juwaynī, ijma' is a definite evidence (dalīl qat'ī) of Islamic Law which has similar position to the Qur'ān and the Sunnah of the Prophet Muḥammad. The first imām of the Muslims, Abū Bakr was unanimously agreed to have been appointed by election of ahl al-hall wa al-'aqd. A member of ahl al-hall wa al-'aqd must be male, free in status, knowledgeable, Muslim, possessing power and piety. There is no specific number of ahl al-hall wa al-'aqd required by al-Juwaynī. The appointment is valid even by one person of ahl al-hall wa al-'aqd as long as the person is able to create power for the appointed imām.

There are three legal methods of the appointment of the imām which are recognized by al-Juwaynī i.e. election by ahl al-hall wa al-ʿaqq, assignment by the existing imām and self-appointment by usurpation of power. Al-Juwaynī rejects the appointment of the imām by the nass of the Prophet.

The contract of the imamate is for unlimited period as long as the imām fulfils the objectives of the imamate and there is no circumstance which requires his disqualification or dismissal occurring. Witness is only recommended for the appointment of the imām. The appointment of the imām is valid even if it is contracted by one who is able to create power for the appointed imām even it is not witnessed. Only one imām for all the Muslims in the world is permitted at one time in any condition.

To qualify for the post of the imamate, one must possess sound senses - able to see, able to hear and able to speak, and sound limbs and organs so that one would be able to perform the duties of the imamate independently and sufficiently. The imām also must be of descent from Quraysh, a male, free in status, a Muslim, sound mind, of age, brave, a muitahid, pious and possessing capacity. Infallibility is not required for the post of the imamate. However, according to al-Juwaynī's latest opinion, the imām



must be the best person in the ummah except that if the appointment of the best person would cause chaos and destruction to the ummah, the imamate of the less qualified person is permitted. Among the above-mentioned qualities which are required for the imamate, in the case of there being many qualified persons, between the requirement of possessing capacity and piety, possessing capacity should be given priority over piety and the priority between the requirement of possessing knowledge and the requirement of possessing capacity should depend on the current circumstances and needs. If the faith of the Muslims is safe from any problem but the country is threatened from external or internal enemies, the one who possesses capacity should be given priority. Similarly, if the country is safe from any threat from external and internal enemies but is facing problems relating to the faith (ʿaqīdah) of the Muslim, the knowledgeable person should be given priority. In the case of there being no fully qualified person for the imamate, piety should be given first priority, then followed by possessing capacity, possessing knowledge and the descent from Quraysh.

The imam should be deposed automatically if he commits apostacy, becomes mad or suffers from mental disorder, becomes blind, deaf or dumb, or suffers from defect of limbs and organs which would cause him to be unable to perform his duties of the imamate effectively. The imām

should be dismissed by ahl al-hall wa al-'aqd if he commits sin which constitutes fisq and his fisq causes disorder in his reasoning and a negative effect on the religion of Islām and the Muslims. The imām should also be dismissed if he is imprisoned in war or suffers from a chronic illness of which his release and recovery respectively are not expected. Loss of obedience from the people to the imām is another legal reason for the dismissal of the imām. If dismissal must be done, it must be done before the appointment of the new imām. If the disqualified or dismissed imām refuses to step down from the post of the imamate, steps must be taken by the Muslims. Among the steps suggested by al-Juwaynī is appointing a new imām, if the circumstances allow, despite the existence of the disqualified or dismissed imām as in this case, the disqualified or dismissed imām is considered as not existing. The new imām then should treat the disqualified or dismissed imām as a rebel. If the appointment of the new imām would lead to bloodshed and destruction to the Muslims, the Muslims should choose "the lesser of two evils". If leaving the disqualified or dismissed imām with the power in his hands is "the lesser evil", the appointment of the new imām is no longer obligatory on the Muslims until the circumstances change. Creating the change in order that the appointment of the new imām can be made possible is the responsibility of the Muslims.



As a general rule, once the imām is appointed, it is not permitted for him to resign from the post of the imamate without any acceptable reason.

The purpose of the establishment of the imamate is to conduct the religious and worldly affairs of the Muslims. In conducting the religious affairs, the imām should protect the religion of Islām by fighting against bid'ah and heresy, abstaining himself from interfering in the conflict of opinion between the Muslim jurists, guiding the people to follow the tradition of the early pious scholars and sending missionaries to the people to explain the true teaching of Islām, to call non-Muslims to Islām by discussion and jihād, and to supervise the acts of worship which are performed by the people. In conducting worldly affairs, it is the duty of the imām to expand the territory of Islām to non-Islamic territories and to protect them from its external enemy, to provide security to the people and to fulfil the needs of those in need in the country of Islām.

In fulfilling his duty, the imām requires assistants and equipment. The assistants who are required by the imām are wazīrs, judges, governors, revenues collectors, administrators, and army commanders and officers. The equipment which is required by the imām consists of professional military force and finance. The sources of



revenues for the finance of the imamate are zakāt, al-fay' (including jizyah and kharāj), the estates which are left by the Muslims without an heir entitled to them, lost property of which the finding of its owner is hopeless, the wealth of the rich people and the produce of agriculture.

In conclusion, from al-Juwaynī's political writings, it seems that according to him, the imamate is the ideal and the only legitimate political organization for the Muslims. Al-Juwaynī's political thought which is focused on the doctrine of the imamate is purely based on Islamic sources - the Qur'ān, the Sunnah of the Prophet Muḥammad, ijmā', qiyās (analogy) and the opinions of the Muslim scholars, such as al-Shāfi'ī, al-Ash'arī, al-Bāqillānī and Abū Ishāq al-Isfarāyīnī. There are no non-Islamic sources referred by al-Juwaynī.

From the contents of al-Juwaynī's doctrine of the imamate, it can be said that possibly with an exception of the discussion on the legitimacy of the Guided Caliphs, his doctrine of the imamate is an extension and elaboration for the doctrine of the imamate which has been discussed by some Sunnite Ash'arite scholars before him such as al-Ash'arī and al-Bāqillānī.

In many places in his writings on the imāmate, al-

Juwaynī explicitly quotes the opinions of al-Shāfi'ī<sup>1</sup>, al-Ash'arī<sup>2</sup>, al-Bāqillānī<sup>3</sup> and al-Isfarāyīnī<sup>4</sup>. Sometimes, al-Juwaynī explicitly calls these Sunnite Ash'arite scholars as "our intellectual scholars" (a'immatinā)<sup>5</sup>, "my masters" (ashābi)<sup>6</sup> "our shaykh"<sup>7</sup> and "our ustādh"<sup>8</sup> even though he does not agree with all their views.

Al-Juwaynī's doctrine of the imamate is presented in the same way as it is presented by other Sunnite Ash'arite scholars except al-Māwardī. The thought is presented in the form of questions and answers. Most of the discussions are addressed to the opponents of the Sunnites i.e. the Shī'ites which was very influential during that period. A few discussions are addressed to the Mu'tazilites and the Kharijites.

Al-Juwaynī's doctrine of the imamate is very detailed and critical. Up to al-Ghāzālī, al-Juwaynī's doctrine of

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<sup>1</sup> al-Ghiyāthī(1), p. 247, p. 200, see also Chapter 5, p. 53, Chapter 4, p.160

<sup>2</sup> al-Ghiyāthī(1), p. 69, p. 175, see also Chapter 1, p. 49, p. 774

<sup>3</sup> al-Ghiyāthī(1), p. 73, see also Chapter 1, p. 49, p. 71

<sup>4</sup> al-Ghiyāthī(1), p. 175, see also Chapter 1, p. 74

<sup>5</sup> al-Ghiyāthī(1), p. 326, see also Chapter 1, p. 68

<sup>6</sup> al-Irshād, p. 426, see also Chapter 2, p. 84

<sup>7</sup> al-Ghiyāthī(1), p. 175, see also Chapter 1, p. 74

<sup>8</sup> Ibid.

the imamate can be considered as the most extensive and the most detailed one compared to the doctrine composed by other Sunnite Ash'arite scholars.

However, although al-Juwaynī's doctrine is an extension and elaboration for the Sunnite Ash'arite scholars who lived before his time, his thoughts are original and are built from his own ijtihad. This is a clear difference between him and al-Māwardī as the doctrine of the imamate which is composed by al-Māwardī in his al-Ahkām al-Sultāniyyah is a collection of the views of the scholars who came before him. As stated by al-Juwaynī, al-Māwardī's writing is not built by his own ijtihad. Due to this reason, in al-Ghiyāthī, al-Juwaynī criticizes al-Māwardī as a plagiarist.<sup>9</sup> However, his criticism of al-Māwardī does not mean that he dislikes al-Māwardī is not personal but due to his negative attitude towards taglīd.

As a result of al-Juwaynī's use of ijtihad, he adds many new views and rules to the opinions of his predecessors of the Sunnite Ash'arite scholars and elaborates them in detail. Among the new views and rules which are added or extended by him are the number of the qualities required for the imamate, the circumstances which require the disqualification or dismissal of the imām by

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<sup>9</sup> See al-Ghiyāthī(1), pp. 141 - 142, see also Chapter 8, p. 249



fisq, the requirement of possessing power for ahl al-hall wa al-'aqq, the number of the duties of the imām and the finance of the imamate<sup>10</sup>. In many places of his writings, al-Juwaynī himself states that the views or rules which he composes have not been discussed by any of the previous Muslim scholars.<sup>11</sup>

In many issues he disagrees with those Muslim scholars. Among others, the issue of the validity of the hadīth "the imāms must be from Quraysh" as the evidence for the requirement that the imām must be a Qurashī, the validity of a dhimmī as a wazīr, the prohibition of having two imāms at the same time, loss of the sense of smell as a circumstance which requires disqualification of the imām and the correctness of Mu'āwiyah in his conflict with 'Alī<sup>12</sup>.

The originality of al-Juwaynī's thought can also be proven by the characteristic of his thought that it is developed through stages and in some issues, his views are contradictory to each other. Such a development and contradiction can be found in his three books which contain his writings on the doctrine of imamate i.e. Lam' al-

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<sup>10</sup> Cf. Chapter 8, pp. 257 - 260

<sup>11</sup> For example, See al-Ghiyāthī(1), p. 267

<sup>12</sup> Cf. Chapter 8, pp. 261 - 263

Adillah, al-Irshād and al-Ghiyāthī.

The following are among the issues on which his views are developed through stages and of which some of them are contradictory to each other:

- (i) The number of the qualities required for the imamate.
- (ii) The invalidity of the hadīth " The imāms should be from Quraysh".
- (iii) The appointment of the less qualified person as the imām.
- (iv) The requirement of fisq as a circumstance for the disqualification or dismissal of the imām.
- (v) The permissibility of resignation by the imām from the post of the imāmate.

To be more exact, as is mentioned earlier in this thesis, al-Juwaynī passes through three stages in his thought on the second and the third issues until he has settled with his latest views. In the fourth and the fifth issues, he passes through two stages which are contradictory to each other.

Another reason which may also support the fact that al-Juwaynī's doctrine of the imamate is original and is built from his own ijtihād is that not only does he disagree and reject the opinions of the adversaries of the Sunnites i.e. the Shi'ites, the Mu'tazilites and the Kharijites, but he also disagrees and rejects the opinions of the scholars from his own sect, the Sunnite Ash'arites.

As far as sect is concerned, there is no doubt that al-Juwaynī belongs to the Sunnite Ash'arites. As has been mentioned earlier, most of the questions presumed and answered in his writings are meant to respond to the views of the adversaries of the Sunnites. The sects which are sometimes mentioned explicitly by al-Juwaynī are such as the Shi'ites, the Imamites of the Rafidites, the Zaydites, the Mu'tazilites and the Karmatians.

This fact is also supported by his defence of the legitimacy of the imamate of the four Guided Caliphs as the Sunnite Ash'arite scholars had done before him.<sup>13</sup> Besides, al-Juwaynī also proves the legitimacy of Nizām al-Mulk as the de facto imām of the Muslims for his time. It is known in history that Nizām al-Mulk was a wazīr for the ruler of the Saljūqs who gave all his efforts in supporting Sunnism

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<sup>13</sup> The most detailed defence for the legitimacy of the four Guided Caliphs by any Sunnite Ash'arite scholars before al-Juwaynī is by al-Bāqillānī in his al-Tamhīd.



and fighting against the adversaries of the Sunnites such as the Shiites and the Mu'tazilites.

As to the influence of his doctrine on his well-known student, al-Ghazālī, to some extent, it can be concluded that it is clear that al-Ghazālī was influenced by his teacher, al-Juwaynī, in his thought on the imamate. For example, al-Ghazālī is the second Sunnite Ash'arite scholar who explicitly states that the issue of the imamate is not among the theological issues as is claimed by the Shiites but is an issue of the branches of Islām or the issue of the derived laws. The first Sunnite Ash'arite scholar who expresses this statement is al-Juwaynī.

The qualities which are required for the imamate which are found in al-Ghazālī's writings are almost similar to those which are found in al-Juwaynī's writings. Some issues which are not clearly explained by al-Juwaynī are re-explained by al-Ghazālī in his writings such as the basis (mustanad) of the ijmā' on the issue of the obligation to establish the imamate and the meaning of the terms "al-naǧdah" and "al-kifāyah". Also, possibly due to the influence by al-Juwaynī's defence for Nizām al-Mulk as the de facto legitimate imām of the Muslims for his time even though Nizām al-Mulk does not fulfil all the qualities required for the imamate, al-Ghazālī defends al-Mustazhirī as the legitimate imām of the Muslims for his time.

However, not all the issues or rules which are put forward by al-Juwaynī are agreed by al-Ghazālī, as discussed earlier.<sup>14</sup>

In comparing al-Ghazālī's thoughts on the imamate with that of al-Juwaynī's, it is found that the scope of al-Juwaynī's thoughts is much wider and more detailed than that of al-Ghazālī. Many issues which are discussed by al-Juwaynī are not discussed by al-Ghazālī such as the definition of the imamate, various qualities which are required by ahl al-hall wa al-'aqq, the rules regarding the appointment of two imams at the same time, the circumstances which require the disqualification and dismissal of the imam and the finance of the imamate.

As a whole, it can be said that al-Juwaynī's doctrine of the imamate is the largest contribution to the topic from any Sunnite Ash'arite scholars up to and including al-Ghazālī. By this finding, the claim by Muḥammad Muslehuddīn that the list of the qualities required for the imām which are required by al-Māwardī is the longest of all becomes no longer valid.<sup>15</sup>

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<sup>14</sup> See Chapter 8, pp. 268 - 270

<sup>15</sup> See Muslehuddīn, Muḥammad, Islam and Its Political System, Islamabad, 1988, p. 106

## APPENDIX I: LIST OF AL-JUWAYNĪ'S WORKS

1. al-Asālib. On ʿilm al-khilāf. This work has not been found yet. (See ʿAbd al-ʿAzīm al-Dīb, Fiqh Imām al-Ḥaramayn, p. 257)
2. al-ʿAqīdah al-Nizāmiyyah fi Qawāʿid al-Arkān al-Islāmiyyah. ed. Muḥammad Zahid al-Kawtharī and has been translated into German by Helmut Klopfer. On ʿilm al-kalām.
3. al-Burhān fī Uṣūl al-fiqh. Two volumes, ed. ʿAbd al-ʿAzīm al-Dīb. On uṣūl al-fiqh.
4. al-Durrah al-Muḍīyah fī Mā Waqaʿa fih al-Khilāf bayn al-Shāfiʿiyyah, ed. ʿAbd al-ʿAzīm al-Dīb.
5. al-Durrah al-Mughīthah fī Mā Waqaʿa min Khilāf bayna al-Shāfiʿī wa al-Ḥanafī. ed. ʿAbd al-ʿAzīm al-Dīb. On ʿilm al-khilāf wa al-jidāl.
6. Fī Zawāʾi al-Bikr. Available in Subkī's Ṭabaqāt al-Shāfiʿiyyah al-Kubrā. On fiqh.
7. Ghiyāth al-Umam fī Iltiyāth al-Zulam. 2 editions. (i) ed. ʿAbd al-ʿAzīm al-Dīb, Kullīyyah of Sharīʿah, University of Qaṭar, 2nd printing 1401 A.H. (ii) ed.



Fuād ʿAbd al-Munʿim and Muṣṭafā al-Ḥilmī,  
Alexandria. Mainly on fiqh siyāsī.

8. Ghunyah al-Mustarshidīn fī al-Khilāf. On ʿilm al-khilāf.
9. al-Irshād fī Qawāʿi al-Adillah fī Uṣūl al-Iʿtiqād,  
ed. Muḥammad Yūsuf Mūsā and ʿAlī ʿAbd al-Munʿim,  
Cairo, 1950. On ʿilm al-kalām, translated  
into English by Mary Ann Danner, Indiana University  
as "Correct Guidance with Respect to the Principles  
of Creed"
10. al-Irshād fī uṣūl al-fiqh. Ms.
11. al-Kāfiyah fī al-Jidāl, ed. Fawkiā Hussein Mahmoud,  
On ʿilm al-khilāf wa al-Jidāl.
12. al-Kāmil fī Ikhtisār al-Shāmil. Ms.. On  
ʿilm al-kalām (?)
13. Kitāb Majāri Abkām al-Khulafā' fī Ayyāmihim. This  
work is not proven available but al-Juwaynī mentioned  
it in al-Ghiyāthī (See ʿAbd ʿAzīm al-Dīb, al-  
Ghiyāth(1), p. 115)
14. Kitāb Muḡhith al-Khalq fī ikhtiyār al-Aḥaqq. Ms.. On

uṣūl al-fiqh.

15. Kitab al-Muṭṭahidīn. Ms.. On uṣūl al-fiqh.
16. Laghz al-Ummah. Ms.. On fiqh (?)
17. Lam' al-Adillah fī Qawā'id 'Aqā'id Ahl al-Sunnah wa al-Jamā'ah, ed. Fawkiā Hussein Mahmūd. On 'ilm al-kalām.
18. Madārik al-'Uqūl. The last book written by al-Juwaynī and not completed. (See 'Abd al-'Azīm al-Dīb, al-Ghiyāthī(1), p. 49 mīm). On uṣūl al-fiqh.
19. Manāzīrah fī al-Jidāl wa al-Ijtihād wa al-Qiblah. On uṣūl al-fiqh.
20. Masā'il al-Imām 'Abd al-ḥaqq al-Ṣiqalī wa Ajwibatuh li al-Imām Abī al-Ma'ālī. Ms.. On fiqh.
21. Mukhtaṣar al-Irshād li al-Baqillānī. Ms.. On 'ilm al-kalām. (?)
22. Mukhtaṣar al-Nihāyah. Ms.. On fiqh.
23. Nihāyah al-Maṭlab fī Dirāyah al-Madhhab. Most Mss. are available at Ma'had Iḥyā' al-Makhtuṭāt li Jāmi'ah

al-Duwal al-ʿArabiyyah, Cairo. First volume has been edited by Dr. ʿAbd al-ʿAzīm al-Dīb. A compendium of fiqh. Probably comprises of 27 volumes.

24. Risālah fī al-Fiqh. Ms.

25. Risālah fī Ithbāt al-Istiwā' wa al-Fawqīyyah, ed. ʿAbd al-ʿAzīm al-Dīb.

26. Risālah fī al-Taqlīd wa al-Ijtihād, ed. ʿAbd al-ʿAzīm al-Dīb. On uṣūl al-fiqh.

27. Risālah fī Uṣūl al-Dīn. Ms.

28. al-Shāmil (fī Uṣūl al-Dīn). On ʿilm al-kalām.

29. al-Silsilah fī Maʿrifah al-Qawlayn wa al-Waḥayn, ed. ʿAbd al-ʿAzīm al-Dīb. On fiqh.

30. al-Talkhīs. Ms.. On Uṣūl al-Fiqh (?)

31. al-Waraqāt fī Uṣūl al-Fiqh. ed. ʿAbd al-Laṭīf Muḥammad al-ʿAbd, Cairo (?), n.d.



## APPENDIX II

### AL-JUWAYNĪ'S TEACHERS<sup>1</sup>

#### (a) Indirect Teachers:

1. ʿAlī b. Ismaʿīl Abū Ḥasan  
al-Ashʿarī (d. 320 A.H./912 C.E.)
2. Abū Bakr Muḥammad b.  
al-Ṭayyib al-Bāqillānī (d. 403 A.H./1012 C.E.)
3. Abū Ishāq Ibrāhīm b.  
Muḥammad b. Ibrāhīm  
b. Mihrān al-Isfarāyīnī (d. 418 A.H./1027 C.E.)

#### (b) Direct Teachers:

4. Abū ʿAbdullah Muḥammad b.  
Ibrahim b. Yaḥyā al-Muzakkī (d. 428 A.H./1036 C.E.)
5. Manṣūr b. Rāmish (d. 428 A.H./1036 C.E.)
6. Abū Nuʿaym al-Isfahānī (d. 430 A.H./1038 C.E.)
7. Abū Saʿd ʿAbd al-Rahmān b.  
al-Ḥasan b. ʿAlīk (d. 431 A.H./1039 C.E.)
8. ʿAlī b. Aḥmad b. al-Ḥasan b.  
Muḥammad b. Naʿīm Abū

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<sup>1</sup> These names are collected from scattered materials - The Origination, Fiqh, Imām al-Ḥaramayn, Tabayin, Nouri, Moufid Muhammad, "The Scholars of Nishāpūr 700 - 1225 A.D." (unpublished Ph.D. thesis, University of Edinburgh, 1967)

- al-Ḥasan al-Ashʿarī (d. 432 A.H./1040 C.E.)
9. Abū Saʿd ʿAbd al-Raḥmān b.  
Ḥamdān al-Naysābūrī  
al-Naḍrawī (d. 433 A.H./1041 C.E.)
10. Al-Imām Abū Muḥammad  
al-Juwaynī (d. 439 A.H./1047 C.E.)
11. Abū ʿAbd al-Raḥmān Muḥammad  
b. ʿAbd al-ʿAzīz al-Nīlī (d. 441 A.H./1049 C.E.)
12. Abū ʿAbdullah al-Khabbāzī (d. 449 A.H./1057 C.E.)
13. Abū al-Qāsim al-Isfarāyīnī  
al-Iskāfī (d. 452 A.H./1060 C.E.)
14. Aḥmad b. al-Ḥusayn b. ʿAlī  
b. ʿAbdullah b. Mūsā Abū Bakr  
al-Naysābūrī (d. 458 A.H./1065 C.E.)
15. Al-Ḥasan b. Muḥammad b.  
Muḥammad b. Aḥmad Abū ʿAlī  
al-Marzawī (d. 462 A.H./1069 C.E.)
16. Al-Shaykh Abū al-Ḥasan ʿAlī  
b. Faḍḍāl Ibn ʿAlī  
al-Mujāshīʿī (d. 469 A.H./1076 C.E.)
17. Abū Ḥasan Muḥammad b. Aḥmad  
al-Muzakkī (d. 469 A.H./1076 C.E.)

# APPENDIX III

## AL-JUWAYNĪ'S STUDENTS<sup>2</sup>

1. Abū ʿAlī al-ʿUthmānī (d. 468 A.H./1075 C.E.)
2. Abū al-Muḍaffar al-Samʿānī (d. 490 A.H./1096 C.E.)
3. Abū Muḥammad al-Astarābādī (d. 491 A.H./1097 C.E.)
4. Abū al-Qāsim al-Juwaynī (d. 492 A.H./1098 C.E.)
5. Abū Nasr al-Argiyānī (d. 499 A.H./1105 C.E.)
6. Abū al-Muḍaffar al-Khawāfī (d. 500 A.H./1105 C.E.)
7. Abū Ḥāmid al-Ghazālī (d. 505 A.H./1111 C.E.)
8. Ilkiyā al-Ḥarrāsī (d. 510 A.H./1116 C.E.)
9. Abū al-Ḥasan al-Ṭāʾī (d. 512 A.H./1118 C.E.)
10. Abū al-Qāsim al-Anṣārī (d. 512 A.H./1118 C.E.)
11. al-Sabbāk (d. 513 A.H./1119 C.E.)
12. Abū Naṣr al-Qushayrī (d. 514 A.H./1120 C.E.)
13. Abū al-Maʿālī al-Ṭūsī (d. 515 A.H./1121 C.E.)
14. Abū al-Ghanāʾim al-Mūshīlī (d. 525 A.H./1130 C.E.)
15. ʿAbd al-Ghāfir al-Fārisī (d. 529 A.H./1134 -5 C.E.)
16. al-Furāwī (d. 531 A.H./1136 C.E.)
17. Abū Saʿd al-Muʾadhdhin (d. 531 A.H./1136 - 7 C.E.)
18. al-Aḥdāth (d. 534 A.H./1139 C.E.)
19. al-Khuwārī (d. 536 A.H./1141 C.E.)

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<sup>2</sup> See Nouri, Moufid Muhammad, "The Scholar of Nishāpūr 700 - 1225 A.D." pp. 615 - 616



20. al-Damghānī (d. 545 A.H./1150 C.E.)
21. Abū al-Maʿālī al-Khawāfi (d. 555 A.H./1160 - 1 C.E.)

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